

No. 2647

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles on Appeal.
(IN TWO VOLUMES)

ALASKA COAST COMPANY, a Corporation,
Claimant of the Steamship "JEANNIE,"
Her Tackle, Apparel, Furniture, etc.,
Appellant,
vs.

ALASKA PACIFIC FISHERIES, a Corporation,
Appellee.

VOLUME I.
(Pages 1 to 288, Inclusive.)

Upon Appeal from the United States District Court for the
Western District of Washington, Northern Division.

Filed

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in a original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated byinting in italic the two words between which the omission seems occur. Title heads inserted by the Clerk are enclosed within

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*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,
Libelant,

vs.

The Steamship "JEANNIE," Her Tackle, Apparel,
Furniture, etc.,

Respondent.

ALASKA COAST COMPANY, a Corporation,
Claimant.

Names and Addresses of Counsel.

W. H. BOGLE, Esq., 609-616 Central Building,
Seattle, Washington,

CARROLL B. GRAVES, Esq., 609-616 Central
Building, Seattle, Washington,

F. T. MERRITT, Esq., 609-616 Central Building,
Seattle, Washington,

LAWRENCE BOGLE, Esq., 609-616 Central Build-
ing, Seattle, Washington.

Proctors for Claimant and Appellant.

J. A. KERR, Esq., 1309-16 Hoge Building, Seattle,
Washington,

E. S. McCORD, Esq., 1309-16 Hoge Building,
Seattle, Washington,

C. H. HANFORD, Esq., Colman Building, Seattle,
Washington,

Proctors for Libelant and Appellee. [1*]

*Page-number appearing at foot of page of certified Apostles on Ap-
peal.

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,
Libelant,

vs.

The Steamship "JEANNIE," Her Tackle, Apparel,
Furniture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,
Claimant.

STATEMENT.

TIME OF COMMENCEMENT OF SUIT.

September 29, 1913.

NAMES OF PARTIES.

Alaska Pacific Fisheries, a corporation, libelant.

Alaska Coast Company, a corporation, claimant.

DATES WHEN PLEADINGS WERE FILED.

Libel: September 29, 1913.

Answer: October 13, 1913.

Amended Libel: March 21, 1914.

Amended Answer: March 25, 1914.

Second Amended Libel: February 17, 1915.

Stipulation as to Amended Answer: March 30,
1915. [2]

ISSUANCE OF PROCESS AND SERVICE THEREOF.

The libel herein was filed in the above-entitled
court on September 29, 1913. Process was issued on

that day and delivered to the United States Marshal, for the seizure of the said steamship "Jeanie." Without waiting for, but waiving formal seizure of the vessel, the Alaska Coast Company, owner thereof, on September 29, 1913, duly entered its appearance in said cause, filed its claim for said vessel, and a duly approved stipulation in the sum of \$15,000.00, for the release of said vessel, with United States Fidelity & Guaranty Company, a corporation, as surety. No other property was attached or arrested, nor defendant arrested, nor bail taken in said cause.

REFERENCE TO COMMISSIONER.

On January 27, 1914, the said Court duly made and filed an order of reference in said cause to A. C. Bowman, United States Commissioner, to take and report the testimony in said cause, and on March 22, 1915, said Commissioner duly returned the testimony taken before him in said cause into court, and the same was on said day filed in the office of the clerk thereof. Theretofore there had been taken in said cause, pursuant to stipulations therein between the said parties, certain depositions, which had also been duly returned, published and filed in said court. Certain facts in said cause had also theretofore been stipulated therein. No question of fact was referred to a Commissioner. [3]

TRIAL.

On May 24, 1915, said cause came duly on for trial and final hearing before Honorable Jeremiah Neterer, one of the Judges of said court, upon said pleadings, stipulations, the testimony so taken before said Commissioner, and returned and filed in court,

together with Libellant's Exhibits "A" and "B," and Respondent's Exhibits 1, 2, 3, 4, 6 and 7, which were offered in evidence by said respective parties, and returned by said Commissioner and filed in said court (no exhibit 5 having been returned or filed), also the depositions theretofore taken and filed in said cause. Proctors for the respective parties appeared and argued said cause in open court, and thereafter submitted written briefs to said Court. Thereafter, and on June 25, 1915, said Judge, before whom said cause was tried and heard, duly filed his memorandum decision on the merits in said cause.

FINAL DECREE.

Final decree, in accordance with such memorandum decision on the merits, was filed July 12, 1915, which decree was signed by Honorable Jeremiah Neterer, the Judge who heard and tried said cause.

NOTICE OF APPEAL.

Notice of Appeal, with admission of service thereof, filed July 30, 1915. [4]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,
Libellant,

vs.

Steamship "JEANIE," Her Tackle, Apparel,
Furniture, etc.,

Respondent,

Libel.

To the Honorable JEREMIAH NETERER, Judge
of the Above-entitled Court:

The libel and complaint of Alaska Pacific Fisheries, a corporation of Portland, Oregon, against the steamship "Jeanie," her tackle, apparel and furniture, and against all persons claiming any interest therein, in a cause of tort and damage to cargo, civil and maritime:

I.

That at all times herein mentioned the libelant was and now is a corporation duly organized and existing under the laws of the State of Oregon, with its principal place of business in the City of Portland, and as such corporation was at all times herein mentioned and now is the owner of certain salmon canneries located at Chilcoot, Chomley and Yes Bay in the Territory of Alaska.

II.

That in the months of December, 1912, and January, 1913, the steamship "Jeanie" was a common carrier of passengers and freight between ports in Alaska and Puget Sound in the State of Washington. [5]

III.

That on the 21st day of December, 1912, at Chilcoot, in Alaska, the libelant delivered to said steamship "Jeanie" for transportation to Seattle, 10,747 cases of canned salmon; and on the 27th day of December, 1912, at Yes Bay, Alaska, the libelant delivered to said steamship "Jeanie" for transportation

to Seattle, 13,972 other cases of canned salmon; and on the 2d day of January, 1913, at Chomley, Alaska, the libelant delivered to said steamship "Jeanie," for transportation to Seattle, 4,737 other cases of canned salmon, making the entire consignment of canned salmon to be carried to Seattle on the then intended voyage of said steamship, 29,657 cases, all containing canned salmon and in good order and well conditioned, and the same were received by the master of said steamship and taken on board the said vessel.

IV.

That having received said merchandise for transportation to Seattle, it became and was the duty of said vessel, her master and crew, to carry the same safely and discharge and deliver the same at Seattle in good order and well conditioned as at the time of shipment.

V.

That the total value of said 29,657 cases of canned salmon, at the time when the same should have been delivered at the termination of said voyage was Ninety Thousand Dollars.

VI.

That on the 2d day of January, 1913, said steamship "Jeanie" having all of said merchandise on board, proceeded on her voyage to Seattle, where she arrived on the 8th day of January, 1913, and there discharged her cargo, including all of said [6] merchandise, at Virginia St. dock, for delivery to the libelant and thereupon the libelant paid the freight stipulated to be paid for the transportation of said merchandise.

VII.

That by the misconduct and negligence of the master of said steamship "Jeanie" and her crew, a large part of said merchandise, to wit, 4,000 cases was improperly stowed in the lower hold of said ship, without being properly dunnaged to protect the same from injury by displacement, and by contact with bilge water and damage by water leaking through the interior skin of the ship. And by the negligence and misconduct of the captain and crew of the said ship, the whole interior of the space in said ship used for the stowage of the cargo was in an unclean and unfit condition for the carriage of merchandise, in this: That previous to receiving the cargo for transportation on said voyage, a cargo of coal in bulk had been carried in said ship and delivered at ports in Alaska, and large quantities of coal and coal-dust remained in the interior of the ship and the whole of her interior space was unclean. That by reason of the unseaworthiness of said ship, she took in an unusual quantity of water on her voyage to Seattle, by a leakage through seams on the deck and elsewhere in said ship, which the libelant is unable to specify. That by reason of the misconduct and negligence of the master and crew of said ship the pumps were not operated sufficiently to keep the vessel free from an accumulation of water in her hold, and the same coming in through the skin of the ship and in contact with the cargo and being mixed with coal-dust, injured and damaged all of said 29,657 cases of sal-

mon in this: That all of said cases were stained and blackened and rendered worthless and the tin cans containing the salmon were made wet and rusty, the labels thereon [7] being for the most part stained, wet and discolored and considerable quantities of coal-dust penetrated the cases, causing injury to the cans to such an extent that it became and was necessary to recondition all of said cans by removing the same from the damaged cases and repacking them and a large number of the cans required relacquering and relabeling in order to restore the same to marketable condition.

VIII.

That promptly as practicable a special examination and survey of the cargo was made and notice of damage was given to the owner of said steamship "Jeanie."

IX.

That with the knowledge and approval of the owner, and in order to reduce the amount of loss by reason of said damage to a minimum, the libelant causes said merchandise to be overhauled and reconditioned and thereby incurred an expense of Forty-two Hundred and Eighty-two and Six-hundredths Dollars (\$4282.06), which amount was the reasonable cost of labor and material necessary and which amount the libelant has paid.

X.

That by reason of said damage the said merchandise, after being so overhauled and reconditioned, was depreciated in value to the amount of Twenty-five Hundred Dollars.

XI.

That by reason of the damage to said merchandise and the necessity for overhauling and reconditioning the same, the libelant was delayed in marketing and disposing of said merchandise and deprived of the income that should have been received from the sale thereof, for a period of three (3) months, and thereby sustained an additional loss in the sum of One Thousand Dollars. [8]

XII.

That by reason of the irremediable damage thereto by reason of rust on the cans, 2,000 in number of cases are in an unsalable condition and libelant has been unable to sell or dispose of the same, whereby libelant has sustained loss in the sum of Forty-five Hundred Dollars.

XIII.

That all of said damages were caused by the unseaworthiness of said vessel and by the bad stowage and by the want of proper dunnage thereof on board said vessel, and by the negligence, carelessness, improper conduct and want of attention of the master, his mariners and servants, in loading said salmon in the hold of said vessel without having removed therefrom large quantities of coal and coal-dust and in failing and neglecting to keep the decks of said vessel properly caulked, the hatches properly battened down during said voyage and in failing to keep the same covered with safe, adequate and secure tarpaulin and in failing to maintain adequate pumps on said vessel and to operate the same and keep the water out of the bilges of said vessel and out of the

hold of said vessel where said salmon was stowed and in permitting the bilge water negligently allowed to collect and remain in said vessel from entering the hold where said salmon were stowed, whereby said salmon were permeated with coal-dust and water and damaged as above alleged, and by not having delivered the same in good order and condition and free from damage. That said damage occurred to said cargo while said ship was on the voyage aforesaid.

XIV.

That the master and owners of said vessel and their agents have neglected and failed to render any compensation to libelant for the damage sustained as aforesaid. [9]

XV.

That said steamer "Jeanie" is an American vessel and is now within the district and within the jurisdiction of this court.

XVI.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, the libelant prays that process in due form of law and according to the course and practice of this Court in causes of admiralty and maritime jurisdiction may issue against the said steamer "Jeanie," her engines, tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid, and that said steamer "Jeanie," her engines, tackle, apparel and furniture, etc., may be condemned and sold to satisfy the claims of the libel-

ant aforesaid, with interest thereon from the date of filing this libel, and for costs.

C. H. HANFORD,
KERR & McCORD,

Proctors and Attorneys for Libelant. [10]

State of Oregon,
County of Multnomah,—ss.

John H. Burgard, being first duly sworn, on oath deposes and says: I am vice-president of the libelant, Alaska Pacific Fisheries; I have read the above and foregoing libel and know the contents thereof and the same is true as I verily believe.

JOHN H. BURGARD.

Subscribed and sworn to before me this 16th day of September, A. D. 1913.

[Seal]

G. A. HARTMAN,

Notary in and for the State of Oregon.

[Indorsed]: Libel. Filed in the U. S. District Court, Western District of Washington, Sept. 29, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [11]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2570.

IN ADMIRALTY.

ALASKA PACIFIC FISHERIES, a Corporation,
Libelant,

vs.

Steamship "JEANIE," Her Tackle, Apparel, Furn-
iture, etc.,

Respondent,

ALASKA COAST COMPANY,

Claimant.

Answer.

To the Honorable JEREMIAH NETERER, Judge of
the Above-entitled Court:

The answer of the Alaska Coast Company, a corporation, the above-named claimant, and sole owner of the steamship "Jeanie," her tackle, apparel, furniture, etc., to the libel of the Alaska Pacific Fisheries, in a cause of tort and damage to cargo, civil and maritime.

I.

For answer to the first article of the libel, claimant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein, but claimant here states that so far as it is advised, the facts stated in said first article are true.

II.

Answering the second article of the libel, claimant admits that during the month of December, 1912, and January, 1913, the steamship "Jeanie" was a common carrier of freight between ports in Puget Sound, in the State of Washington, and ports in Alaska, and that during said time said steamship was engaged in [12] voyages between the said ports, said voyages commencing and ending at the port of Seattle, said port being the home port of said steamer.

III.

For answer to the third article of the libel, this claimant admits that on or about the 21st day of December, 1912, at Chilcoot, Alaska, libelant delivered to the steamer "Jeanie" approximately 10,747 cases of canned salmon; that on the 30th day of December, 1912, at Yes Bay, Alaska, libelant delivered to the steamer "Jeanie" approximately 13,972 cases of canned salmon; and that on the 2d day of January, 1913, at Chomley, Alaska, libelant delivered to said steamer "Jeanie" approximately 4737 cases of canned salmon. Claimant admits that all of said salmon which was delivered to the steamer "Jeanie" was delivered for transportation to Seattle, and that the same was taken aboard said vessel. Except as herein expressly admitted, claimant denies each and every allegation in said article three contained.

IV.

For answer to article four of the libel, this claimant denies each and every allegation therein contained.

V.

For answer to article five of the libel, this claimant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, and asks that if the same be material, the libelant be required to prove the same.

VI.

For answer to article six of the libel, this claimant admits that the said steamer "Jeanie," having all of said merchandise on board which had been delivered to it by libelant, sailed from Chomley, Alaska, on or about the 2d day of January, 1913, [13] on her return voyage to Seattle, and that she arrived at Seattle on or about the 8th day of January, 1913, and discharged her cargo, including the merchandise belonging to libelant, at the Virginia Street dock in said city. Except as herein expressly admitted, claimant denies the allegations of said article six.

VII.

For answer to article seven of the libel, claimant denies each and every allegation in said article contained.

VIII.

Answering article eight of the libel, claimant denies each and every allegation therein contained.

IX.

For answer to article nine of said libel, claimant admits that the said libelant caused the said merchandise to be overhauled and reconditioned, and thereby incurred an expense of \$4,282.06. Except as herein expressly admitted, claimant denies each and

every allegation of said article nine.

X.

For answer to article ten of the libel, claimant denies each and every allegation therein contained.

XI.

For answer to article eleven of the libel, claimant denies each and every allegation therein contained.

XII.

For answer to article twelve, claimant denies each and every allegation therein contained.

XIII.

For answer to article thirteen of the libel, claimant denies each and every allegation therein contained.

XIV.

For answer to article fourteen of the libel, claimant admits that neither the master or owner of said vessel, or their [14] agents, have paid libellant any sum on account of damage to said merchandise. Except as herein expressly admitted, claimant denies the allegations of article fourteen.

XV.

For answer to article fifteen of the libel, claimant admits the allegations therein contained.

XVI.

For answer to article XVI of the libel, claimant denies that the premises are true, except as hereinbefore in this answer expressly admitted, and admits that this cause is within the admiralty and maritime jurisdiction of this court.

And this claimant, further answering said libel, says:

I.

That proir to the commencement of the voyage mentioned in the said libel, and at the time of the commencement of said voyage, the then owner of the said steamship "Jeanie" exercised due diligence to make said vessel in all respects seaworthy and properly manned, equipped and supplied and claimant alleges that at all the times mentioned in said libel the said steamship "Jeanie" was seaworthy, properly manned, equipped and supplied, and that the damage to said merchandise, if any such damage occurred in said merchandise while it was aboard said vessel, was caused by extremely rough weather encountered on the said voyage, by perils of the sea, and by faults or errors in navigation or in the management of the said vessel on the said voyage.

WHEREFORE, this claimant having fully and completely answered the allegations of the said libel herein, respectfully prays that this cause be dismissed, and that it have and recover [15] its costs and disbursements herein.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Claimant.

United States of America,

State of Washington, County of King,—ss.

Lawrence Bogle, being first duly sworn, on oath deposes and says: That he is one of the proctors for Alaska Coast Company, claimant above named, that he has read the foregoing answer, knows the contents thereof, and believes the same to be true, and that he is authorized to, and makes this verification for and

on behalf of the said claimant.

LAWRENCE BOGLE,

Subscribed and sworn to before me this 16th day of October, 1913.

[Seal]

F. T. MERRITT, .

Notary Public in and for the State of Washington,
Residing at Seattle.

Service of within Answer this 16th day of October, 1913, and receipt of a copy thereof, admitted.

KERR & McCORD,

Attorneys for Libellant.

TO WHOM IT MAY CONCERN:

Notice is hereby given that service of all subsequent papers in the within-named action, except writs and process, may be made upon respondent claimant, by serving same upon Bogle, Graves, Merritt & Bogle, as proctors for respondent claimant at 609-616 Central Building, Seattle, Wash.

BOGLE, GRAVES, MERRITT & BOGLE,

For Respondent Claimant.

[Indorsed]: Answer. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 16, 1913. Frank L. Crosby, Clerk. By B. O. W., Deputy. [16]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2570.

ALASKA FISHERIES, a Corporation,

Libelant,

vs.

Steamship "JEANIE," her Tackle, Apparel, Furn-
iture, etc.,

Respondent,

Amended Libel.

To the Honorable JEREMIAH NETERER, Judge of
the Above-entitled Court:

The amended libel and complaint of Alaska Fish-
eries Company, a corporation of Portland, Oregon,
against the steamship "Jeanie," her tackle, apparel
and furniture, and against all persons claiming any
interest therein, in a cause of tort and damage to
cargo, civil and maritime, filed by leave of court, al-
leges as follows:

I.

That at all times herein mentioned the libelant was
and now is a corporation duly organized and existing
under the laws of the State of Oregon, with its prin-
cipal place of business in the City of Portland, and as
such corporation was at all times herein mentioned
and now is the owner of certain salmon canneries
located at Chilcoot, Chomley and Yes Bay, in the
Territory of Alaska.

II.

That in the months of December, 1912, and January [17] 1913, the steamship "Jeanie" was a common carrier of passengers and freight between ports in Alaska and Puget Sound in the State of Washington.

III.

That on the 21st day of December 1912, at Chilcoot, in Alaska, the libelant delivered to said steamship "Jeanie," for transportation to Seattle, 10,747 cases of canned salmon; and on the 27th day of December, 1912, at Yes Bay, Alaska, the libelant delivered to said steamship "Jeanie" for transportation to Seattle, 13,972 other cases of canned salmon; and on the 2d day of January, 1913, at Chomley, Alaska, the libelant delivered to said steamship "Jeanie," for transportation to Seattle, 4737 other cases of canned salmon to be carried to Seattle on the then intended voyage, making the entire consignment of canned salmon to be carried to Seattle on said voyage of said steamship, 29,657 cases, all containing canned salmon and in good order and well conditioned, and the same were received by the master of said steamship and taken on board the said vessel.

IV.

That having received said merchandise for transportation to Seattle, it became and was the duty of said vessel, her master, and crew, to carry the same safely and discharge and deliver the same at Seattle in good order and well conditioned as at the time of shipment.

V.

That the total value of said 29,657 cases of canned salmon, at the time when the same should have been delivered at the termination of said voyage if the same had been in the same good condition then as when received on board of said steamship "Jeanie," would have been Eighty-five Thousand Six Hundred and Thirty and 40/100 (\$85,630.40) Dollars. [18]

VI.

That on the 2d day of January, A. D. 1913, said steamship "Jeanie" having all of said merchandise on board, proceeded on her voyage to Seattle, where she arrived on the 8th day of January, 1913, and there discharged her cargo including all of said merchandise at Virginia Street dock, for delivery to the libelant, and thereupon the libelant paid the freight stipulated to be paid for the transportation of said merchandise.

VII.

That by the misconduct and negligence of the master of said steamship "Jeanie" and her crew, a large part of said merchandise, was improperly stored in the lower hold of said ship without being properly dunnaged to protect the same from injury by displacement, and by contact with bilge water and damaged by water leaking through the interior skin of the ship; and by the negligence and misconduct of the captain and crew of the said ship, the whole interior of the space in said ship used for the storage of the cargo was in an unclean and unfit condition for the carriage of merchandise, in this: That previous to receiving the cargo for transportation on

said voyage, a cargo of coal in bulk had been carried in said ship and delivered at ports in Alaska and large quantities of coal and coal-dust remained in the interior of the ship and the whole of her interior space was unclean; that by reason of the unseaworthiness of said ship, she took in an unusual quantity of water on her voyage to Seattle, by a leakage through seams on the deck and elsewhere in said ship, which the libelant is unable to specify. That by reason of the misconduct and negligence of the master and crew of said ship the pumps were not operated sufficiently to keep the vessel [19] free from an accumulation of water in her hold, and the same coming in through the skin of the ship and in contact with the cargo, and being mixed with coal-dust, injured and damaged all of said 29,657 cases of salmon in this: That a large number of said cases were stained and blackened and rendered worthless and the tin cans containing the salmon were made wet and rusty, the labels thereon being for the most part stained, wet and discolored and considerable quantities of coal-dust penetrated the cases, to such an extent that the cans therein and the labels thereon were soiled and made unmarketable without cleaning; and the coal-dust within said cases was not discoverable without opening the same for inspection and for that reason it was necessary to open and repack each and every of said 29,657 cases and recondition several thousand cans by wiping, scouring, relacquering and relabeling in order to restore the same to marketable condition.

VIII.

That promptly as practicable a special examination and survey of the cargo was made and notice of damage was given to the owner of said steamship "Jeanie."

IX.

That with the knowledge and approval of the owner and in order to reduce the amount of loss by reason of said damage to a minimum, the libelant caused said merchandise to be overhauled and reconditioned and thereby incurred an expense of Forty-two Hundred and Eighty-two and Six-hundredths Dollars (\$4282.06), which amount was the reasonable cost of labor and material necessary and which amount the libelant has paid.

X.

That during said period of delay and detention of said merchandise for necessary reconditioning of the same, the [20] market price thereof declined, so that the difference in the market value thereof was the sum of Seventy-nine Hundred Thirty-five and Forty-hundredths Dollars (\$7935.40) less at the time the work was completed, than the value thereof on January 10th, 1913, the date on which said merchandise was discharged from said steamship "Jeanie," and the libelant sustained a loss by reason of such diminished value, to the amount of \$7,935.40.

XI.

That by reason of the damage to said merchandise and the necessity for overhauling and reconditioning the same the libelant was delayed in marketing and disposing of said merchandise and deprived of the

income that should have been received from the sale thereof, for a period of Seventy days (70) and thereby sustained an additional loss in the sum of Nine Hundred and Eighty-five and 60/100 Dollars (\$985.60.)

XII.

That by reason of said delay while said merchandise was being reconditioned to make it fit for market, the libelant incurred expenses for seventy (70) days storage amounting to Seven Hundred Seventy-eight and Forty-seven Hundredths Dollars (\$778.47), and for insurance for the same period of One Hundred and Fifty and Fifty-four Hundredths Dollars (\$150.54).

XIII.

That all of said damage was caused during said voyage by the unseaworthiness of said vessel and by the bad stowage and by the want of proper dunnage therefor on board said vessel and by the negligence, carelessness, improper conduct and want of attention of the master, his mariners and servants in loading said salmon in the hold of said vessel without removing therefrom large quantities of coal and coal-dust and in failing and [21] neglecting to keep the decks of said vessel properly caulked and the hatches properly battened down during said voyage and in failing to keep the same covered with safe, adequate and secure tarpaulin and in failing to maintain adequate pumps on said vessel and to operate the same and keep the water out of the bilges of said vessel and out of the hold of said vessel where said salmon was stowed, whereby said salmon were

permeated with coal-dust and water and damaged as above alleged, and by not having delivered the same in good order and condition and free from damage.

XIV.

That the master and owners of said vessel and their agents have neglected and failed to render any compensation to libelant for the damage sustained as aforesaid.

XV.

That the said steamship "Jeanie" at the times hereinbefore referred to and at the time of the commencement of this suit was an American vessel, and at the time of commencing this suit and the filing of the claimant's stipulation to satisfy the degree to be rendered herein, said vessel was within the jurisdiction of this court.

XVI.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, the libelant prays that process in due form of law and according to the course and practice of this court in causes of admiralty and maritime jurisdiction may issue against the said steamer "Jeanie," her engines, tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer the matters [22] aforesaid, and that said steamer "Jeanie," her engines, tackle, apparel and furniture," etc., may be condemned and sold to satisfy the claim of the libelant aforesaid, with interest thereon

from the date of filing the libel, and for costs.

C. H. HANFORD,
KERR & McCORD,
Proctors for Libelant.

State of Washington,
County of King,—ss.

C. A. Burckhardt, being first duly sworn, on oath deposes and says: I am president of the libelant, Alaska Fisheries Company; I have read the above and foregoing libel and know the contents thereof and the same is true as I verily believe.

C. A. BURCKHARDT.

Subscribed and sworn to before me this 6th day of Mch., A. D. 1914.

[Seal] J. N. HAMILL,
Notary Public in and for the State of Oregon, Residing at Portland.

[Indorsed]: Amended Libel. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 21, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. [23]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,
Libelant,

vs.

Steamship "JEANIE," Her Tackle, Apparel, Fur-
niture, etc.,

Respondent.

ALASKA COAST COMPANY,

Claimant.

Amended Answer.

To the Honorable JEREMIAH NETERER, Judge
of the Above-entitled Court:

The amended answer of the Alaska Coast Com-
pany, a corporation, the above-named claimant and
sole owner of the S. S. "Jeanie," her tackle, apparel,
furniture, etc., to the libel of the Alaska Pacific Fish-
eries in a cause of tort and damage to cargo, civil and
maritime.

I.

Claimant admits the allegations of the first article
of the libel.

II.

Answering the second article of the libel, claimant
admits that during the months of December, 1912,
and January, 1913, the steamship "Jeanie" was a
common carrier of freight between ports in Puget
Sound, in the State of Washington, and ports in

Alaska, and that during said time the said steamship was engaged in voyages between the said ports, said voyages commencing and ending at the ports of Seattle, said port being the home port of said steamship. [24]

III.

For answer to the third article of the libel, this claimant admits that on or about the 21st day of December, 1912, at Chilcoot, Alaska, libelant delivered to the steamer "Jeanie" approximately 10,747 cases of canned salmon; that on the 30th day of December, 1912, at Yes Bay, Alaska, libelant delivered to the steamer "Jeanie" approximately 13,972 cases of canned salmon; and that on the 2d day of January, 1913, at Chomley, Alaska, libelant delivered to said steamer "Jeanie" approximately 4737 cases of canned salmon. Claimant admits that all of said salmon which was delivered to the steamer "Jeanie" was delivered for transportation to Seattle, and that the same was taken aboard said vessel. Except as herein expressly admitted, claimant denies each and every allegation in said article there contained.

IV.

For answer to article four of the libel, this claimant denies each and every allegation therein contained.

V.

For answer to article five of the libel, this claimant states that it is without knowledge or information sufficient to form a belief as to the truth of the

allegations therein contained, and asks that if the same be material, the libelant be required to prove the same.

VI.

For answer to article six of the libel, this claimant admits that the said steamer "Jeanie," having all of said merchandise on board which had been delivered to it by libelant, sailed from Chomley, Alaska, on or about the 2d day of January, 1913, on her return voyage to Seattle, and that she arrived at Seattle on or about the 8th day of January, 1913, and discharged her cargo, including the merchandise belonging to libelant, at the Virginia [25] Street block in said city. Except as herein expressly admitted, claimant denies the allegations of said article six.

VII.

For answer to article seven of the libel, claimant denies each and every allegation in said article contained.

VIII.

Answering article eight of the libel, claimant denies each and every allegation therein contained.

IX.

For answer to article nine of said libel, claimant admits that the said libelant caused the said merchandise to be overhauled and reconditioned, and thereby incurred an expense of \$4,282.06. Except as herein expressly admitted, claimant denies each and every allegation of said article nine.

X.

Answering article ten of the libel, claimant denies each and every allegation therein contained.

XI.

For answer to article eleven of the libel, claimant denies each and every allegation therein contained.

XII.

For answer to article twelve, claimant denies each and every allegation therein contained.

XIII.

For answer to article thirteen of the libel, claimant denies each and every allegation therein contained.

XIV.

For answer to article fourteen of the libel, claimant admits that neither the master or owner of said vessel, or their agents, have paid libelant any sum on account of damages to said merchandise. Except as herein expressly admitted, claimant denies the allegations of article fourteen. [26]

XV.

For answer to article fifteen of the libel, claimant admits the allegations therein contained.

XVI.

For answer to article XVI of the libel, claimant denies that the premises are true, except as hereinbefore in this answer expressly admitted, and admits that this cause is within the admiralty and maritime jurisdiction of this court. [27]

And this claimant, further answering said libel, says:

I.

That at all the times alleged in the libel herein it was the sole owner of the S. S. "Jeanie," but that at all said times, said steamer was under time charter

to the W. F. Swan & Company, and was at all said times being operated by the said W. F. Swan & Company, as a common carrier of freight for hire to and from the port of Seattle and various ports in the District of Alaska, and between such various ports in the District of Alaska.

II.

That on or about the 19th day of December, 1912, the said libelant Alaska Pacific Fisheries delivered to the said steamer, at its Chilcoot cannery on Chilcoot Inlet 10,638 cases of canned salmon for carriage and delivery to Kelley Clarke Company, Seattle; that upon the delivery of this shipment of salmon to the said steamship "Jeanie," the purser of said steamship "Jeanie," as agent of W. F. Swan & Company, charterers and operators of said steamer, issued and delivered to said libelant a bill of lading or shipping receipt covering the carriage of said salmon, a copy of which said bill of lading or shipping receipt is attached hereto, marked exhibit "A" and made a part hereof.

III.

That after the issuing of said bill of lading or shipping receipt, covering the carriage of said salmon, and after delivering the same to the libelant, and the acceptance thereof by said libelant, and after finishing loading said goods, the said steamship "Jeanie" proceeded on her said voyage, and after encountering extremely rough and tempestuous weather, during which the steamer labored and strained heavily and shipped large quantities of water on deck, the said steamer on the 30th day of December, 1912, ar-

rived at libelant's Yes Bay cannery a short distance from Ketchikan, Alaska. [28]

IV.

That on or about the 31st day of December, 1912, libelant delivered to the said steamship "Jeanie," at its said Yes Bay cannery, approximately 14,027 cases of canned salmon, for carriage and delivery to Kelley Clarke Company, Seattle; that upon the delivery of said salmon to said steamship "Jeanie," the purser of said steamship, as agent of the charterers and operators of said steamship, issued and delivered to the libelant a bill of lading or shipping receipt, covering the carriage of said shipment of salmon, a copy of which bill of lading or shipping receipt is attached hereto marked exhibit "B" and made a part hereof.

V.

That after issuing said bill of lading or shipping receipt, and delivering the same to the said libelant, and the acceptance thereof by the said libelant and after loading said goods, the said steamship "Jeanie" proceeded on her voyage and arrived at libelant's Chomley cannery, near Ketchikan, Alaska, on the 2d day of January, 1913; that on or about the 2d day of January, 1913, said libelant delivered to said steamship "Jeanie" at its Chomley cannery approximately 5,000 cases of canned salmon for carriage and delivery to Kelley Clarke Company, Seattle; that upon the delivery of said salmon to the said steamer the purser of said steamer as agent of the charterers and operators of said steamer issued and delivered to the said libelant a bill of lading or shipping receipt covering the carriage of said canned

salmon, a copy of which bill of lading or shipping receipt is attached hereto marked exhibit "C" and made a part hereof.

VI.

That after issuing the said bill of lading or shipping receipt, and after delivering the same to the said libelant, and the acceptance thereof by said libelant, and after loading said goods, said steamship "Jeanie" proceeded on her said voyage to [29] Seattle, and after encountering extremely rough and tempestuous weather during which the vessel labored and strained heavily and shipped tremendous quantities of water on deck, the said vessel arrived at Seattle, Washington, on the 8th day of January, 1913, and proceeded to the Virginia Street dock in said port, and immediately commenced to unload her said cargo, and on or about January 10th, 1913, completed the unloading thereof.

VII.

That the said bills of lading or shipping receipts, copies of which are attached hereto marked exhibits "A," "B" and "C," and made a part hereof, were issued by the said steamer and delivered to the said libelant and accepted by the said libelant as hereinabove in this amended answer alleged, and that the said bills of lading or shipping receipts constitute the agreement or contract between the libelant and the said steamer "Jeanie" for the carriage and delivery of said consignments of salmon, and that the said bills of lading or shipping receipts constitute the only contract or agreement covering said carriage and delivery of said consignments of salmon

ever entered into between said libelant and the said steamship "Jeanie" and that the said shipment of said salmon was accepted and carried under the conditions and stipulations contained in and on the back of said bills of lading or shipping receipts and not otherwise.

VIII.

That prior to the commencement of the voyage mentioned in said libel, and at the time of the commencement of said voyage, the charterer and then owner of said steamship "Jeanie," exercised due diligence to make the said vessel in all respects seaworthy, properly manned, equipped and supplied, and claimant alleges that at all said times mentioned in said libel the said steamship "Jeanie" was seaworthy, properly manned, equipped and supplied, [30] and that the said canned salmon was at all the times properly cared for, stowed, damaged and handled, and was by it carefully and properly transported in the usual way, from the ports of shipment to the port of Seattle, and that the same was on or about January 10, 1913, duly delivered to the said consignee, and if the same was damaged while aboard said vessel, the said damage was caused by extremely rough weather encountered on the said voyage by perils of the sea, and by faults or errors in navigation or in the management of the said vessel on the said voyage.

IX.

That it is provided in each of said bills of lading or shipping receipts, among other things, as follows:

"All claims for damage to or loss of any prop-

erty to be presented to the carrier, or the nearest agent thereof within ten days from date of notice thereof—the arrival of vessel at port or place of discharge, or knowledge of the stranding or loss of vessel to be deemed notice—and that after sixty days from such date, no action, suit or proceeding in any court of justice shall be brought for any damage to or loss of said property, and a failure to present such claim within said ten days, or to bring suit within said sixty days, shall be deemed a conclusive bar and release of all right to recover against the vessel or its master, said carrier or any of the stockholders thereof, for any damage or loss. The claim for loss or of damage to any of the said property shall be restricted to the cash value of same at the port of shipment, at the date of shipment.”

That no claim was presented by this libellant or by the said consignee, or by anyone on their behalf to the carrier, or to any agent of the carrier, or to the said charterers, or to the said steamship, within ten days after the arrival of vessel at port of discharge, nor was any action brought against the said steamship or her owners or her master or against the said charterers for the alleged loss or damage to the said goods, within sixty days after the arrival of said vessel at port of discharge.

WHEREFORE, this claimant having fully and completely answered the allegations of the said libel herein, respectfully [31] prays that this cause be dismissed, and that it have and recover its costs and

disbursements herein.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Claimant.

United States of America,

State of Washington,

County of King,—ss.

C. W. Wiley, being first duly sworn, on oath deposes and says: That he is manager of the Alaska Coast Company, claimant above named, that he has read the foregoing answer, knows the contents thereof, and believes the same to be true, and that he is authorized to, and makes this verification for and on behalf of the said claimant.

C. W. WILEY.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal]

RADCLIFFE FORMAN,

Notary Public in and for the State of Washington,
Residing at Seattle. [32]

[Exhibit "A" to Amended Answer.]

ORIGINAL SHIPPING ORDER.

Chilkoot Wharf.

Dec. 19, 1912.

Delivered to W. F. Swan & Company (hereinafter named Carrier) by Ala. Pacific Fisheries to be forwarded by S. S. Jeanie or by some other barge or steamer owned or controlled by said carrier, the property enumerated hereon, same being apparently in good order, except as otherwise noted, the value, weight, quantity, quality and condition of contents being unknown to said Carrier, and to be

forwarded with such dispatch as the general business of the Carrier will permit and delivered at vessel's tackle at the port of landing of

Seattle

in like good order as received (but with the option to the master to carry the property on deck, to deviate and to lighter, tranship, land and reship the said property or any part thereof, and to stop and land and to receive passengers and freight at intermediate ports or places) unto the consignee, or of shipment is to be carried beyond above named port or landing, to connecting Carrier or forwarder, he or they paying freight at tariff rates (unless otherwise agreed) on delivery, and charges advanced by Carrier and average, and to secure the payment of freight and charges the said property is hereby pledged to the Carrier. The said property to be received, held, carried and delivered by said Carrier, subject to all the stipulations and conditions hereon and on the reverse side hereof under which conditions rates are quoted and property is received for transportation, and to all of which the shipper hereby agrees; and Notice of arrival of said goods at said port is hereby waived.

NAME OF CONSIGNEE—Kelly Clarke.

DESTINATION—Seattle.

MARKED—

N. B.—Shipments must not be accepted until all above blanks are properly filled. Consignments to Order must not be accepted unless name of some resident is given to notify of arrival. Freight must be marked with proper shipping mark and full name

of place of destination—initials not accepted, such terms as “Mdse.,” “Sundries,” etc., must not be used in place of proper descriptive details.

N. of Pkgs.		Articles.	Weight.	Feet.
3077 c/s	Trolling Brand Salmon	#1	Subject to Correction.	
5903 “	Spear “ “	#1		
1658 “	Coho Wkd c			
10638	<u>m</u> $\frac{A}{V}$		T. BANBURY, Purser. Agent.	

or Wharfinger.

Shippers desiring lower rates, when such are conditional upon shipments being released or at Owner’s Risk, or upon valuation must sign release clause on the back hereof. [33]

CONDITIONS.

The barge or steamers on which the property herein described shall be forwarded, shall have leave to tow and assist vessels; to sail with or without pilots; to tranship to any other steamers owned or controlled by said Carrier; to lighter from steamer to steamer, or to and from steamer and shore; to transfer to and from hulks, to ship by other carrier or conveyance goods destined for ports or places off the route, or beyond the port of discharge of said steamer, but under no circumstances shall the carrier be held responsible for any damage to or loss of said property after the same shall be unhooked from the vessel’s tackle.

The Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters, by fire from any cause and wheresoever occurring by barratry of the master or crew, by enemies, pirates, robbers, by arrest and restraint of princes, rulers, or people,

riots, strikes or stoppage of labor, by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them.

The carrier shall not be responsible for leakage of oils, liquor or other liquors, breakage of glass or queensware, injury to or breakage of glass, looking glasses, show cases or picture frames, stoves, hollow-ware, or other frail castings, or for breakage of any property packed in boxes, barrels, crates or bales when such packages do not present evidence of rough handling or improper stowage, or for any injury to the hidden contents of packages, or for breakage resulting from the fragile nature of the freight, or from chafing, wet or rust, resulting from the imperfect or insecure packing or insufficient cooperage, or the result of shipping without packing; or for loss in weight of coffee, grain or any other freight packed in bags, or for loss in weight of rice in tierces, sugar in barrels, or for the decay of perishable articles, or damage to any article arising from the effect of heat or cold, sweating or fermentation, or by reason of its own inherent vice or liability, or for loss or damage resulting from providential causes, or for damage to tobacco caused by stains to packages or by sweating or fermenta-

tion; or damage to cargo by vermin, burning, or explosion of articles on freight or otherwise, or loss or damage on account of inaccuracy or omissions in marks or descriptions, or from unavoidable detention or delay; nor for loss of specie, bullion, bank notes, government notes, bonds or consuls, jewelry or any property of special value, unless shipped under its proper title or name, and extra freight paid thereon.

Live stock to be carried at owner's risk. Pelts, dry hides, butter and eggs, boxes, and other packages, must be each and every package marked with the full address of the consignee, and if not so marked, it is agreed that the delivery of the full number of packages, without regard to quality, shall be deemed a correct delivery and in full satisfaction of this receipt.

Advance charges shall be paid to Carrier, vessel or property lost or not lost at any stage of the entire transit, and if freight and charges are not paid within thirty days after notice to consignee of arrival of vessel at port or place of destination, the Carrier may sell the said property at public or private sale and apply the proceeds in payment of freight, storage and all other charges; or the master may dispose at any time of any article of a perishable nature when in his opinion the said articles would become decayed or worthless before they could be delivered to the consignee or owner.

The property shall be received by the consignee thereof at the vessel's tackle immediately on arrival of the vessel at the port or place of delivery, with-

out regard to weather; if the consignee is not on hand to receive the property, as discharged, then the Carrier may deliver it to the wharfinger, or other party or person believed by said Carrier to be responsible, and who will take charge of said property and pay freight on same, or the same may be kept on board or landed and stored in hulks, or put in lighters, by the Carriers, at the expense and risk of the owner, shipper or consignee, and at his or their risk [34] of any nature whatever. And further, that in case the vessel should be prevented by stress of weather or other cause from entering the port or place of delivery, or from discharging the whole or any part of her cargo there, the said property may, at the option of the master or agent be conveyed upon said vessel to the contract in regard to the original voyage, and at the risk of the owner, shipper or consignee of said property.

nearest or other port, and thence returned to the port of delivery by the same or other vessel, subject to all the provisions of this

The person or party delivering any property to the said vessel or Carrier for shipment, is authorized to sign the shipping receipt for the shipper. The Carrier shall in no event be liable for any injury to said property, or for any damage or loss suffered by the owner, or by the consignee thereof, unless its negligence or the negligence of its officers or servants shall have occasioned the same; and in the event that the Carrier shall become liable for any such injury, damage or loss, it shall have the

benefit of any insurance procured on the said property. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship at the custom house. On delivery of the property enumerated as provided herein, this receipt shall stand cancelled, whether surrendered or not.

All claims for damage to or loss of any property to be presented to the Carrier or the nearest Agent thereof within ten days from date of notice thereof—the arrival of vessel at port or place of discharge, or the knowledge of the stranding or loss of vessel to be deemed notice—and that after sixty days from such date no action, suit or proceeding in any court of justice shall be brought for any damage to or loss of said property; and a failure to present such claim within said ten days, or to bring suit within said sixty days, shall be deemed a conclusive bar and release of all right to recover against the vessel or its master, said Carrier or any of the stockholders thereof, for any damage or loss. Claim for loss or of damage to any of the said property shall be restricted to the cash value of same at the port of shipment at the date of shipment.

On the happening of any accident whereby the steamer shall become disabled, the Carrier is hereby authorized to forward the freight or property to the port of delivery by other conveyances at the option of the master, and shall receive extra compensation for such service whether performed by the Carrier's own vessels or those of strangers; and in case of salvage service rendered to the freight or property

during the voyage by a vessel or vessels of the said Carrier, such salvage service shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

The Carrier shall not be required to deliver the property at the port of delivery in any specific or particular time, or to meet any particular market.

The Carrier shall not be held liable or responsible for any loss or damage resulting from the non-delivery or misdelivery of property, on account of its being properly marked with shipping mark and name of port of delivery, and should it be found on the cargo being discharged that goods have been landed without marks, or with marks differing from those on the shipping receipt, or with marks and numbers not distinguishable, the same shall be apportioned to the different incomplete or short consignment lots, and consignees shall conform to such allotment.

It is understood that the Carrier's vessels are warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can secure it; and the Carrier shall not be liable for loss, detention or damage arising directly or indirectly from latent defects in boilers, machinery, or any part of the vessel, provided reasonable measures have been taken to secure efficiency.

In case the barge or steamer shall be prevented from reaching her destination by quarantine, the carrier may discharge the property into any depot, lazaretto or other receptacle, and such discharge

shall be deemed a final delivery, and all quarantine expenses of whatsoever kind on the property shall be borne by the owner thereof and shall be a lien thereof. [35]

General average shall be computed and payable according to the York-Antwerp rules of 1890, or according to American rules, as the carrier may elect.

In all cases when the work Carrier is used herein as representing or as in place of the W. F. Swan & Company it is also understood to cover and include its stockholders and vessels and the masters thereof.

These conditions and stipulations to run to all connecting water-carriers and the delivery of property or freight to a connecting carrier by land shall be understood as an acceptance by the shipper and owner of the conditions and stipulations of such shipping receipt as is used by connecting Carrier in its local business at the place of transfer.

OWNER'S RISK OR RELEASE.—When rate is named subject to owner's risk, which means that shippers assume responsibility for all damage to property in transit not arising from gross negligence of carriers, shipper must write below, the words indicating whether of breakage, chafing, leakage, etc. When two rates are provided, the lower conditioned on release, the Release Clause below must be signed by shipper, otherwise higher rate will be charged.

VALUATION.—When rate is conditioned on valuation, shipper must express on release below

valuation under which they desire to ship.

RELEASE.

I hereby certify that I desire to receive the benefits of any lower rates provided for freight conditional upon carriers being released or at Owner's Risk of* ——— or at value of ——— per ——— and in consideration of such lower rates being applied on the within-named shipment, I hereby assume all risk necessary to receive such benefits.

Shippers will sign here.

Shipper.

*Special attention is called to above clauses referring to owner's risk or release, and valuation.

[36]

[**Exhibit "B" to Amended Answer.**]

ORIGINAL SHIPPING ORDER.

Yes Bay Wharf.

12/31,1912.

Delivered to W. F. Swan & Company (hereinafter named Carrier) by Ala. Pacific Fisheries to be forwarded by S. S. Jeanie or by some other barge or steamer owned or controlled by said Carrier, the property enumerated hereon, same being apparently in good order except as otherwise noted, the value, weight, quantity, quality and condition of contents being unknown to said Carrier, and to be forwarded with such dispatch as the general business of the Carrier will permit and delivered at vessel's tackle at the port of landing of
Seattle

in like good order as received (but with the option

to the master to carry the property on deck, to deviate and to lighter, tranship, land and reship the said property or any part thereof, and to stop and land and to receive passengers and freight at intermediate ports or places) unto the consignee, or if shipment is to be carried beyond above named port or landing, to connecting Carrier or forwarded, he or they paying freight at tariff rates (unless otherwise agreed) on delivery, and charges advanced by Carrier and average, and to secure the payment of freight and charges the said property is hereby pledged to the Carrier. The said property to be received, held, carried and delivered by said Carrier, subject to all the stipulations and conditions hereon and on the reverse side hereof under which conditions rates are quoted and property is received for transportation, and to all of which the shipper hereby agrees; and Notice of arrival of said goods at said port is hereby waived.

NAME OF CONSIGNEE—Kelly Clarke.

DESTINATION—Seattle.

MARKED—

N. B.—Shipments must not be accepted until all above blanks are properly filled. Consignments to Order must not be accepted unless name of some resident is given to notify of arrival. Freight must be marked with proper shipping mark and full name of place of destination—initials not accepted, such terms as “Mdse.,” “Sundries,” etc., must not be used in place of proper descriptive details.

N. of Pkgs.	Articles.	Weight.	Feet.
3124	c/s Empire Brand	Subject to Correction.	
4427	" Mandarin "		
960	" Surf "		
4001	" Victor "	T. BANBURY, Purser. Agent. or Wharfinger.	
1052	" Spear "		
463	" Trolling "		
14027			

Shippers desiring lower rates, when such are conditional upon shipments being released or at Owner's Risk, or upon valuation must sign release clause on the back hereof. [37]

CONDITIONS.

The barge or steamers on which the property herein described shall be forwarded, shall have leave to tow and assist vessels; to sail with or without pilots; to tranship to any other steamers owned or controlled by said Carrier; to lighter from steamer to steamer, or to and from steamer and shore; to transfer to and from hulks, to ship by other carrier or conveyance goods destined for ports or places off the route, or beyond the port of discharge of said steamer, but under no circumstances shall the carrier be held responsible for any damage to or loss of said property after the same shall be unhooked from the vessel's tackle.

The Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters, by fire from any cause and wheresoever occurring by barratry of the master or crew, by enemies, pirates, robbers, by arrest and restraint of princes, rulers, or people, riots, strikes or stoppage of labor, by explosion,

bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, by collisions, stranding, or other accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them.

The Carrier shall not be responsible for leakage of oils, liquor or other liquids, breakage of glass or queensware, injury to or breakage of glass, looking glasses, show cases or picture frames, stoves, hollow-ware, or other frail castings, or for breakage of any property packed in boxes, barrels, crates or bales when such packages do not present evidence of rough handling or improper stowage, or for any injury to the hidden contents of packages, or for breakage resulting from the fragile nature of the freight, or from chafing, wet or rust, resulting from the imperfect or insecure packing or insufficient cooperage, or the result of shipping without packing; or for loss in weight of coffee, grain or any other freight packed in bags, or for loss in weight of rice in tierces, sugar in barrels, or for the decay of perishable articles or damage to any article arising from the effect of heat or cold, sweating or fermentation, or by reason of its own inherent vice or liability, or for loss or damage resulting from providential causes, or for damage to tobacco caused by stains to packages or by sweating or fermentation; or damage to cargo by vermin, burning, or explo-

sion of articles on freight or otherwise, or loss or damage on account of inaccuracy or omissions in marks or description, or from unavoidable detention or delay; nor for loss of specie, bullion, bank notes, government notes, bonds or consuls, jewelry or any property of special value, unless shipped under its proper title or name, and extra freight paid thereon.

Live stock to be carrier at owner's risk. Pelts, dry hides, butter and eggs, boxes, and other packages, must be each and every package marked with the full address of the consignee, and if not so marked, it is agreed that the delivery of the full number of packages, without regard to quality, shall be deemed a correct delivery and in full satisfaction of this receipt.

Advance charges shall be paid to Carrier, vessel or property lost or not lost at any stage of the entire transit, and if freight and charges are not paid within thirty days after notice to consignee of arrival of vessel at port or place of destination, the Carrier may sell the said property at public or private sale and apply the proceeds in payment or freight, storage and all other charges; or the master may dispose at any time of any article of a perishable nature when in his opinion the said articles would become decayed or worthless before they could be delivered to the consignee or owner.

The property shall be received by the consignees thereof at the vessel's tackle immediately on arrival of the vessel at the port or place of delivery, without regard to weather; if the consignee is not on hand to receive the property, as discharged, then

the Carrier may deliver it to the wharfinger, or other party or person believed by said Carrier to be responsible, and who will take charge of said property and pay freight on same, or the same may be kept on board or landed and stored in hulks, or put in lighters, by the Carriers, at the expense and risk of the owner, shipper or consignee, and at his or their risk [38] of any nature whatever. And further, that in case the vessel should be prevented by stress of weather or other cause from entering the port or place of delivery, or from discharging the whole or any part of her cargo there, the said property may, at the option of the master or agent be conveyed upon said vessel to the contract in regard to the original voyage, and at the risk of the owner, shipper or consignee of said property.

nearest or other port, and thence returned to the port of delivery by the same or other vessel, subject to all the provisions of this

The person or party delivering and property to the said vessel or Carrier for shipment, is authorized to sign the shipping receipt for the shipper. The Carrier shall in no event be liable for any injury to said property, or for any damage or loss suffered by the owner, or by the consignee thereof, unless its negligence or the negligence of its officers or servants shall have occasioned the same; and in the event the Carrier shall become liable for any such injury, damage or loss, it shall have the benefit of any insurance procured on the said property. The collector of the port is hereby authorized to grant a

general order for discharge immediately after the entry of the ship at the custom house. On delivery of the property enumerated as provided herein, this receipt shall stand cancelled, whether surrendered or not.

All claims for damage to or loss of any property to be presented to the Carrier or the nearest Agent thereof within ten days from date of notice thereof—the arrival of vessel at port or place of discharge, or the knowledge of the stranding or loss of vessel to be deemed notice—and that after sixty days from such date no action, suit or proceeding in any court of justice shall be brought for any damage to or loss of said property; and a failure to present such claim within said ten days or to bring suit within said sixty days, shall be deemed a conclusive bar and release of all right to recover against the vessel or its master, said Carrier or any of the stockholders thereof, for any damage or loss. Claim for loss or damage to any of the said property shall be restricted to the cash value of same at the port of shipment at the date of shipment.

On the happening of any accident whereby the steamer shall become disabled, the Carrier is hereby authorized to forward the freight or property to the port of delivery by other conveyances at the option of the master, and shall receive extra compensation for such service whether performed by the Carrier's own vessels or those of strangers; and in case of salvage service rendered to the freight or property during the voyage by a vessel or vessels of the said Carrier, such salvage service shall be paid for as

fully as if such salving vessel or vessels belonged to strangers.

The Carrier shall not be required to deliver the property at the port of delivery in any specific or particular time, or to meet any particular market.

The Carrier shall not be held liable or responsible for any loss or damage resulting from the non-delivery or misdelivery of property on account of its not being property marked with shipping mark and name of port of delivery, and should it be found on the cargo being discharged that goods have been landed without marks, or with marks differing from those on the shipping receipt, or with marks and numbers not distinguishable, the same shall be apportioned to the different incomplete or short consignment lots, and consignees shall conform to such allotment.

It is understood that the Carrier's vessels are warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can secure it; and the Carrier shall not be liable for loss, detention or damage arising directly or indirectly from latent defects in boilers, machinery, or any part of the vessel, provided reasonable measures have been taken to secure efficiency.

In case the barge or steamer shall be prevented from reaching her destination by quarantine, the carrier may discharge the property into any depot, lazaretto or other receptacle, and such discharge shall be deemed a final delivery, and all quarantine expenses of whatsoever kind on the property shall

be borne by the owner thereof and shall be a lien thereof. [39]

General average shall be computed and payable according to the York-Antwerp rules of 1890, or according to American rules, as the carrier may elect.

In all cases when the work Carrier is used herein as representing or as in place of the W. F. Swan & Company it is also understood to cover and include its stockholders and vessels and the masters thereof.

These conditions and stipulations to run to all connecting water carriers and the delivery or property or freight to a connecting carrier by land shall be understood as an acceptance by the shipper and owner of the conditions and stipulations of such shipping receipt as is used by connecting Carrier in its local business at the place of transfer.

OWNER'S RISK OR RELEASE.—When rate is named subject to owner's risk, which means that shippers assume responsibility for all damage to property in transit not arising from gross negligence of carriers, shipper must write below, the words indicating whether of breakage, chafing, leakage, etc. When two rates are provided, the lower conditioned on release, the Release Clause below must be signed by shipper, otherwise higher rate will be charged.

VALUATION.—When rate is conditioned on valuation, shipper must express on release below valuation under which they desire to ship.

RELEASE.

I hereby certify that I desire to receive the bene-

fits of any lower rates provided for freight conditional upon carriers being released or at Owner's Risk of* ——— or at value of ——— per ——— and in consideration of such lower rates being applied on the within name shipment, I hereby assume all risk necessary to receive such benefits.

Shippers will sign here.

Shipper.

*Special attention is called to above clauses referring to owner's risk or release, and valuation.
[40]

[Exhibit "C" to Amended Answer.]

ORIGINAL SHIPPING ORDER.

Chomeley Wharf.

June 2, 1913.

Delivered to W. F. Swan & Company (hereinafter named Carrier) by Ala. Pacific Fisheries to be forwarded by S. S. Jeanie or by some other barge or steamer owned or controlled by said Carrier, the property enumerated hereon, same being apparently in good order except as otherwise noted, the value, weight, quantity, quality and condition of contents being unknown to said Carrier, and to be forwarded with such dispatch as the general business of the Carrier will permit and delivered at vessel's tackle at the port of landing of
Seattle

in like good order as received (but with the option to the master to carry the property on deck, to deviate and to lighter, tranship, land and reship the said property or any part thereof, and to

stop and land and to receive passengers and freight at intermediate ports or places) unto the consignee, or if shipment is to be carried beyond above named port or landing, to connecting Carrier or forwarded, he or they paying freight at tariff rates (unless otherwise agreed) on delivery, and charges advanced by Carrier and average, and to secure the payment of freight and charges the said property is hereby pledged to the Carrier. The said property to be received, held, carried and delivered by said Carrier, subject to all the stipulations and conditions hereon and on the reverse side hereof under which conditions rates are quoted and property is received for transportation, and to all of which the shipper hereby agrees; and Notice of arrival of said goods at said port is hereby waived.

NAME OF CONSIGNEE—Kelly Clarke.

DESTINATION—Seattle.

MARKED—

N. B.—Shipments must not be accepted until all above blanks are properly filled. Consignments to Order must not be accepted unless name of some resident is given to notify of arrival. Freight must be marked with proper shipping mark and full name of place of destination—initials not accepted, such terms as “Mdse.,” “Sundries,” etc., must not be used in place of proper descriptive details.

N. of Pkgs.	Articles.	Weight.	Feet.
2500 c/s	Bugle Brand Salmon	Subject to Correction.	
2500 c/s	Victor " "	T. BANBURY,	
<u>5000</u>		Purser.	
		Agent,	
		or Wharfinger.	

Shippers desiring lower rates, when such are conditional upon shipments being released or at Owner's Risk, or upon valuation must sign release clause on the back hereof. [41]

CONDITIONS.

The Barge or steamers on which the property herein described shall be forwarded, shall have leave to tow and assist vessels; to sail with or without pilots; to tranship to any other steamers owned or controlled by said Carrier; to lighter from steamer to steamer, or to and from steamer and shore; to transfer to and from hulks, to ship by other carrier or conveyance goods destined for ports or places off the route, or beyond the port of discharge of said steamer, but under no circumstances shall the carrier be held responsible for any damage to or loss of said property after the same shall be unhooked from the vessel's tackle.

The Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea, or other waters, by fire from any cause and wheresoever occurring by barratry of the master or crew, by enemies, pirates, robbers, by arrest and restraint of princes, rulers, or people, riots, strikes or stoppage of labor, by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, by collisions, stranding

by other accidents of navigation of whatever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the ship owner, not resulting, however, in any case, from want of due diligence by the owners of the ship or any of them.

The Carrier shall not be responsible for leakage of oils, liquor or other liquids, breakage of glass or queensware, injury to or breakage of glass, looking glasses, show cases or picture frames, stoves, hollowware, or other frail castings, or for breakage of any property packed in boxes, barrels, crates or bales when such packages do not present evidence of rough handling or improper stowage, or for any injury to the hidden contents of packages, or for breakage resulting from the fragile nature of the freight, or from chafing, wet or rust, resulting from the imperfect or insecure packing or insufficient cooorage, or the result of shipping without packing; or for loss in weight of coffee, grain or any other freight packed in bags, or for loss in weight of rice in tierces, sugar in barrels, or for the decay of perishable articles, or damage to any article arising from the effect of heat or cold, sweating or fermentation, or by reason of its own inherent vice or liability, or for loss or damage resulting from providential causes, or for damage to tobacco caused by stains to packages or by sweating or fermentation; or damage to cargo by vermin, burning, or explosion of articles on freight or otherwise, or loss or damage on account of inaccuracy or omissions in marks or descriptions, or from unavoidable detention or delay; nor for loss of specie, bul-

lion, bank notes, government notes, bonds or consuls, jewelry or any property of special value, unless shipped under its proper title or name, and extra freight paid thereon.

Livestock to be carried at owner's risk. Pelts, dry hides, butter and eggs, boxes, and other packages, must be each and every package marked with the full address of the consignee, and if not so marked, it is agreed that the delivery of the full number of packages, without regard to quality, shall be deemed a correct delivery and in full satisfaction of this receipt.

Advance charges shall be paid to Carrier, vessel or property lost or not lost at any stage of the entire transit, and if freight and charges are not paid within thirty days after notice to consignee of arrival of vessel at port or place of destination, the Carrier may sell the said property at public or private sale and apply the proceeds in payment of freight, storage and all other charges; or the master may dispose of any time of any article of a perishable nature when in his opinion the said articles would become decayed or worthless before they could be delivered to the consignee or owner.

The property shall be received by the consignees thereof at the vessel's tackle immediately on arrival of the vessel at the port or place of delivery, without regard to weather; if the consignee is not on hand to receive the property, as discharged, then the Carrier may deliver it to the wharfinger, or other party or person believed by said Carrier to be responsible, and who will take charge of said property and pay

freight on same, or the same may be kept on board or landed and stored in hulks, or put in lighters, by the Carriers, at the expense and risk of the owner, shipper or consignee, and at his or their risk [42] of any nature whatever. And further, that in case the vessel should be prevented by stress of weather or other cause from entering the port or place of delivery, or from discharging the whole or any part of her cargo there, the said property may, at the option of the master or agent be conveyed upon said vessel to the contract in regard to the original voyage, and at the risk of the owner, shipper or consignee of said property.

nearest or other port, and thence returned to the port of delivery by the same or other vessel, subject to all the provisions of this

The person or party delivering any property to the said vessel or Carrier for shipment, is authorized to sign the shipping receipt for the shipper. The Carrier shall in no event be liable for any injury to said property, or for any damage or loss suffered by the owner, or by the consignee thereof, unless its negligence or the negligence of its officers or servants shall have occasioned the same; and in the event the *the* Carrier shall become liable for any such injury, damage or loss, it shall have the benefit of any insurance procured on the said property. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship at the custom house. On delivery of the property enumerated as provided herein, this

receipt shall stand cancelled, whether surrendered or not.

All claims for damage to or loss of any property to be presented to the Carrier or the nearest Agent thereof within ten days from date of notice thereof—the arrival of vessel at port or place of discharge, or the knowledge of the stranding or loss of vessel to be deemed notice—and that after sixty days from such date no action, suit or proceeding in any court of justice shall be brought for any damage to or loss of said property; and a failure to present such claim within said ten days, or to bring suit within said sixty days, shall be deemed a conclusive bar and release of all right to recover against the vessel or its master, said Carrier or any of the stockholders thereof, for any damage or loss. Claim for loss or of damage to any of the said property shall be restricted to the cash value of same at the port of shipment at the date of shipment.

On the happening of any accident whereby the steamer shall become disabled, the Carrier is hereby authorized to forward the freight or property to the port of delivery by other conveyances at the option of the master, and shall receive extra compensation for such service whether performed by the Carrier's own vessels or those of strangers; and in case of salvage service rendered to the freight or property during the voyage by a vessel or vessels of the said Carrier, such salvage service shall be paid for as fully as if such salving vessel or vessels belonged to strangers.

The Carrier shall not be required to deliver the property at the port of delivery in any specific or

particular time, or to meet any particular market.

The Carrier shall not be held liable or responsible for any loss or damage resulting from the nondelivery or misdelivery of property, on account of its not being property marked with shipping mark and name of port of delivery, and should it be found on the cargo being discharged that goods have been landed without marks, or with marks differing from those on the shipping receipt, or with marks and numbers not distinguishable, the same shall be apportioned to the different incomplete or short consignment lots, and consignees shall conform to such allotment.

It is understood that the Carrier's vessels are warranted seaworthy only so far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can secure it; and the Carrier shall not be liable for loss, detention or damage arising directly or indirectly from latent defects in boilers, machinery, or any part of the vessel, provided reasonable measures have been taken to secure efficiency.

In case the barge or steamer shall be prevented from reaching her destination by quarantine, the carrier may discharge the property into any depot, lazaretto or other receptacle, and such discharge shall be deemed a final delivery, and all quarantine expenses of whatever kind on the property shall be borne by the owner thereof and shall be a lien thereof. [43]

General average shall be computed and payable according to the York-Antwerp rules of 1890, or ac-

according to American rules, as the carrier may elect.

In all cases when the work Carrier is used herein as representing or as in place of the W. F. Swan & Company it is also understood to cover and include its stockholders and vessels and the masters thereof.

These conditions and stipulations to run to all connecting water carriers and the delivery of property or freight to a connecting carrier by land shall be understood as an acceptance by the shipper and owner of the conditions and stipulations of such shipping receipt as is used by connecting Carrier in its local business at the place of transfer.

OWNER'S RISK OR RELEASE.—When rate is named subject to owner's risk, which means that shippers assume responsibility for all damage to property in transit not arising from gross negligence of carriers, shipper must write below, the words indicating whether of breakage, chafing, leakage, etc. When two rates are provided, the lower conditioned on release, the Release Clause below must be signed by shipper, otherwise higher rates will be charged.

VALUATION.—When rate is conditioned on valuation, shipper must express on release below valuation under which they desire to ship.

RELEASE.

I hereby certify that I desire to receive the benefits of any lower rates provided for freight conditional upon carriers being released or at Owner's Risk of*——— or at value of —— per —— and in consideration of such lower rates being applied on the within name shipment, I hereby assume

all risk necessary to receive such benefits.

Shippers will sign here.

Shipper.

*Special attention is called to above clauses referring to owner's risk or release, and valuation.

Service of the within Amended Answer this 14th day of March, 1914, and receipt of a copy thereof, admitted.

KERR & McCORD,
Proctors for Libelant.

[Indorsed]: Amended Answer. Filed in the U. S. District Court, Western District of Washington, Northern Division, Mar. 25, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [44]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

IN ADMIRALTY—No. 2570.

ALASKA PACIFIC FISHERIES COMPANY, a
Corporation,

Libelant,

vs.

Steamship "JEANIE," Her Tackle, Apparel, Furniture, etc.,

Respondent.

Second Amended Libel.

To the Honorable EDWARD CUSHMAN and the Honorable JEREMIAH NETERER, Judges of the Above-entitled Court:

The second amended libel and complaint of Alaska Pacific Fisheries Company, a corporation of Portland, Oregon, against the steamship "Jeanie," her tackle, apparel and furniture, and against all persons claiming any interest therein, in a cause of tort and damage to cargo, civil and maritime; filed by leave of Court, alleges as follows:

I.

That at all times herein mentioned the libelant was and now is a corporation, duly organized and existing under the laws of the State of Oregon, with its principal place of business in the City of Portland, and as such corporation was at all times herein mentioned and now is the owner of certain salmon canneries located at Chilcoot, Chomley and Yes Bay, in the Territory of Alaska. [45]

II.

That in the months of December, 1912, and January, 1913, the steamship "Jeanie" was a common carrier of passengers and freight between ports in Alaska and Puget Sound in the State of Washington.

III.

That on the 21st day of December, 1912, at Chilcoot, in Alaska, the libelant delivered to said steamship "Jeanie," for transportation to Seattle, 10,747 cases of canned salmon; and on the 27th day of December, 1912, at Yes Bay, Alaska, the libelant deliv-

ered to said steamship "Jeanie" for transportation to Seattle, 13,972 other cases of canned salmon; and on the 2d day of January, 1913, at Chomley, Alaska, the libelant delivered to said steamship "Jeanie," for transportation to Seattle, 4,737 other cases of canned salmon to be carried to Seattle on the then intended voyage, making the entire consignment of canned salmon to be carried to Seattle on said voyage of said steamship 29,657 cases, all containing canned salmon and in good order and well conditioned, and the same were received by the master of said steamship and taken on board the said vessel.

IV.

That having received said merchandise for transportation to Seattle, it became and was the duty of said vessel, her master and crew, to carry the same safely and discharge and deliver the same at Seattle in good order and well conditioned as at the time of shipment.

V.

That the total value of said 29,657 cases of canned salmon, at the time when the same should have been delivered at the termination of said voyage, if the same had been in the same [46] good condition then as when received on board of said steamship "Jeanie" would have been Eighty-five Thousand Six Hundred and Thirty and 40/100 Dollars (\$85,-630.40.)

VI.

That on the 2d day of January, A. D. 1913, said steamship "Jeanie" having all of said merchandise on board, proceeded on her voyage to Seattle, where

she arrived on the 8th day of January, 1913, and there discharged her cargo, including all of said merchandise, at Virginia Street dock, for delivery to the libellant, and thereupon the libellant paid the freight stipulated to be paid for the transportation of said merchandise.

VII.

That by the misconduct of negligence of the master of said steamship "Jeanie" and her crew, a large part of said merchandise was improperly stowed in the lower hold of said ship, without being properly dunnaged to prevent the same from injury by displacement, and by contact with bilge water, and was damaged by water leaking through the interior skin of the ship; and by the negligence and misconduct of the captain and crew of the said ship, the whole interior of the space in said ship used for the storage of the cargo was in an unclean and unfit condition for the carriage of merchandise, in this: That previous to receiving the cargo for transportation on said voyage a cargo of coal in bulk had been carried in said ship and delivered at ports in Alaska and large quantities of coal and coal-dust remained in the interior of the ship and the whole of her interior space was unclean; that by reason of the unseaworthiness of said ship, she took in an unusual quantity of water on her voyage to Seattle, by leakage through seams on the deck and elsewhere in said ship, which the libellant is unable to specify. That by reason of the misconduct and negligence [47] of the master and crew of said ship the pumps were not operated sufficiently to keep the vessel free from an accumula-

tion of water in her hold, and the same coming in through the skin of the ship and in contact with the cargo, and being mixed with coal-dust, injured and damaged all of said 29,657 cases of salmon in this: That a large number of said cases were stained and blackened and rendered worthless and the tin cans containing the salmon were made wet and rusty, the labels thereon being for the most part stained, wet and discolored, and considerable quantities of coal-dust penetrated the cases to such an extent that the cans therein and the labels thereon were soiled and made unmarketable without cleaning; and the coal-dust within said cases was not discoverable without opening the same for inspection and for that reason it was necessary to open and repack each and every of the 29,657 cases and recondition several thousand cans by wiping, scouring, relacquering and relabeling in order to restore the same to marketable condition.

VIII.

That as promptly as practicable a special examination and survey of the cargo was made and notice of damage was given to the owner of the said steamer "Jeanie."

IX.

That with the knowledge and approval of the owner and in order to reduce the amount of loss by reason of said damage to a minimum, the libelant caused said merchandise to be overhauled and reconditioned and thereby incurred an expense of Forty-two Hundred and Eighty-two and 06/100 Dollars (\$4282.06), which amount was the reasonable cost of

labor and material necessary and which amount the libelant has paid.

X.

That during said period of delay and detention of said [48] merchandise for necessary reconditioning of the same, the market prices thereof declined, so that the difference in the market value thereof was the sum of Seventy-nine Hundred Thirty-five and 40/100 Dollars (\$7935.40) less at the time the work was completed than the value thereof on January 10th, 1913, the date on which said merchandise was discharged from the said steamship "Jeanie," and the libelant sustained a loss by reason of such diminished value to the amount of \$7,935.40.

XI.

That by reason of the damage of said merchandise and the necessity for overhauling and reconditioning the same, the libelant was delayed in marketing and disposing of said merchandise and deprived of the income that should have been received from the sale thereof for a period of seventy days, and thereby sustained an additional loss in the sum of Nine Hundred Eight-five and 80/100 Dollars (\$985.80).

XII.

That by reason of said delay while said merchandise was being reconditioned to make it fit for market, the libelant incurred expenses for seventy (70) days' storage, amounting to Seven Hundred Seventy-eight and 47/100 Dollars (\$778.47) and for insurance for the same period of One Hundred Fifty and 54/100 dollars (\$150.54).

XIII.

That all of said damage was caused during said voyage by the unseaworthiness of said vessel and by the bad stowage, and by the want of proper dunnage therefor on board said vessel and by the negligence, carelessness, improper conduct and want of attention of the master, his mariners and servants in loading said salmon in the hold of said vessel without removing therefrom large quantities of coal and coal-dust and in failing [49] and neglecting to keep the decks of said vessel properly caulked and the hatches properly battened down during said voyage and in failing to keep the same covered with safe, adequate tarpaulins and in failing to maintain adequate pumps on said vessel, and to operate the same and keep the water out of the bilges of said vessel and out of the hold of said vessel where said salmon was stored, whereby said salmon was permeated with coal-dust and water and damaged as above alleged, and by not having delivered the same in good order and condition and free from damage.

XIV.

That the master and owners of said vessel and their agents have neglected and failed to render any compensation to libellant for the damage sustained as aforesaid.

XV.

That the steamship "Jeanie" at the times hereinbefore referred to and at the time of the commencement of this suit was an American vessel, and at the time of commencing this suit and the filing of the claimant's stipulation to satisfy the decree to be

rendered herein, said vessel was within the jurisdiction of this court.

XVI.

Replying to the allegations contained in the Amended Answer filed herein, this libelant further alleges:

That it is not true that the several bills of lading set forth in said amended answer, or either of them, or any of bill of lading for any of the said shipments of salmon were delivered to or accepted by this libelant; and it is not true that the documents marked exhibits "A," "B," and "C," attached to said amended answer, or any of them constitute an agreement or contract between the libelant and the said steamer "Jeanie," her [50] owner, master or charterer for the carriage and delivery of said consignments of salmon; and it is not true that the said shipments of salmon or either of them were accepted or carried under the conditions and stipulations contained in and on the back of said bills of lading.

XVII.

And further replying to said amended answer, this libelant alleges:

That it is not true that no claim for the damage to said merchandise was presented by this libelant or by the said consignee or by any one in their behalf to the carrier or to any agent of the carrier, or to the said charterer or to the said steamship within ten days after the arrival of the vessel at the port of discharge.

XVIII.

And further replying to said amended answer, this libelant alleges:

That at the time of the arrival at Seattle of said steamship "Jeanie" on the voyage referred to herein, to wit, on or about the 10th day of January, 1913, the master, owner and charterer of said steamship had actual knowledge and were fully informed of the damage to said merchandise sustained on said voyage as aforesaid, and that this libelant expected to receive compensation therefor and to hold the said steamship "Jeanie" liable for whatever amount of damages should thereafter be ascertained.

That until the entire shipments of salmon were overhauled and reconditioned it was impossible to ascertain the amount of the loss by reason of the damage to said merchandise; and the work of overhauling and reconditioning the said merchandise was not completed until on or about the 20th day of March, 1913, [51] and thereafter the libelant was hindered and prevented from instituting a suit to recover damages by reason of the absence of said steamship "Jeanie" from this Judicial District until on or about the 7th day of April, 1913.

XIX.

And further replying to said amended answer, this libelant alleges:

That on the 7th day of April, 1913, for the convenience and accommodation of the Alaska Coast Company, the claimant herein, this libelant refrained from taking any legal proceedings to enforce its claim for damages against the said steamship "Jeanie," and in recognition of the existence of libelant's claim for damages to said merchandise and to preserve libelant's right to institute at a future

time and prosecute this suit an agreement in writing was made and entered into, as follows:

AGREEMENT.

THIS AGREEMENT, made this 7th day of April, 1913, in the City of Seattle, between the Alaska Coast Co. for themselves and on behalf of W. F. Swan, party of the first part, and Alaska Pacific Fisheries, party of the second part,

WITNESSETH:

THAT, WHEREAS, the steamer "Jeanie," owned by the Alaska Coast Company and under charter to W. F. Swan, party of the first part, did on the 21st day of December, sail from the port of Chilkoot, Alaska, bound on a voyage to Seattle, Washington, via various ports of call, and on a voyage south took on a cargo of salmon at the various ports of call, and on January 8th, 1913, arrived at Seattle, and on subsequent dates it was found that the cargo of salmon had been more or less damaged on the voyage south; and [52]

WHEREAS, it is the desire of the party of the first part and the party of the second part, owner of the salmon, to this agreement, to avoid all unnecessary expenses in connection with any litigation and determination of liability for the loss of or damage to said salmon;

NOW THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) paid by the party of the second part to the party of the first part, receipt of which is hereby acknowledged, it is hereby agreed by the party of the first part that in consideration of the sum so above paid and of the premises here-

inbefore and hereinafter mentioned that the party of the second part shall at this time refrain in taking any legal proceedings in the matter of the protection of their claim by filing a libel against the steamer "Jeanie," the said party of the first part hereby undertakes and agrees that it will stand in the place of and accept services on behalf of the steamer "Jeanie" in connection with any claim against said steamer, and will at any time that the party of the second part may desire to commence litigation appear in court on behalf of said steamer, and will give security for the payment of any claim which may rightfully be due against said steamer, notwithstanding the fact that the steamer may not at the time of the beginning of the suit be within the jurisdiction of the court; and

IT IS HEREBY FURTHER AGREED by the party of the first part that it is the intention and purpose of this agreement to place the party of the second part in the same position as though the steamer "Jeanie" had been libelled and suit begun upon the date of the signing of this agreement.

ALASKA COAST COMPANY.

C. W. WILEY,
Manager.

ALASKA PACIFIC FISHERIES.

By P. A. BURCKHARDT.

H. F. SWAN,
For First Party.

B. H. CLAGHORN,
For Second Party. [53]

XX.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, the libelant prays that process in due form of law and according to the course and practice of this Court in causes of admiralty and maritime jurisdiction may issue against the said steamer "Jeanie," her engines, tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid, and that the said steamer "Jeanie," her engines, tackle, apparel, furniture, etc., may be condemned and sold to satisfy the claim of the libelant aforesaid, with interest thereon from the date of filing the libel, and for costs; and that the Alaska Coast Company, the claimant herein, and the United States Fidelity & Guaranty Company, the obligors in the bond given to the United States Marshal in the sum of \$15,000 for the release of said steamship "Jeanie" from custody, be adjudged and held to abide by and perform the decree of this Court herein, in accordance with the stipulations of said bond; and for such other, further and different relief as may be according to justice and the practice of this Honorable Court in cases of admiralty and maritime jurisdiction.

KERR & McCORD,
C. H. HANFORD,
Proctors for Libelant. [54]

State of Washington,
County of King,—ss.

C. A. Burckhardt, being first duly sworn, on oath deposes and says:

I am President of the Alaska Pacific Fisheries Company, the libelant; I have read the above and foregoing libel and know the contents thereof, and the same is true as I verily believe.

C. A. BURCKHARDT.

Subscribed and sworn to this 15th day of February, A. D. 1915.

JOHN P. GARDIN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within 2d Amended Libel received and due service of same acknowledged this 16th day of February, 1915.

BOGLE, GRAVES, MERRITT & BOGLE,
Attorneys for Claimant.

[Indorsed]: Second Amended Libel. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 17, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [55]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2570.

ALASKA PACIFIC FISHERIES COMPANY, a
Corporation,

Libelant,

vs.

Steamship "JEANIE," Her Tackle, Apparel, Fur-
niture, etc.,

Respondent,

ALASKA COAST COMPANY, a Corporation,
Claimant.

**Stipulation [that Amended Answer of Claimant be
Considered as Claimant's Answer to Libelant's
Second Amended Libel, etc.].**

It is stipulated and agreed by and between the li-
belant and claimant above named, that the Amended
Answer of claimant heretofore filed in this cause
shall be considered as claimant's answer to libelant's
Second Amended Libel on file herein and that all
matters contained in said Second Amended Libel
which are not expressly covered and answered by
said claimant's Amended Answer shall be considered
as expressly denied by said claimant.

Dated this 22d day of March, 1915.

KERR & McCORD,

C. H. HANFORD,

Proctors for Libelant.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Claimant and Respondent.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 30, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [56]

No. 2570.

ALASKA PACIFIC FISHERIES

vs.

Steamship "JEANIE."

Testimony Reported by U. S. Commissioner.

[57]

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*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2570.

ALASKA PACIFIC FISHERIES, a Corporation,
Libelant,

vs.

Steamship "JEANIE," Her Boilers, Engines, etc.,
Respondent,

ALASKA COAST COMPANY,
Claimant.

To the Honorable Judges of the Above-entitled
Court:

On this 18th day of February, 1914, the libelant appeared by its officers and by Judge C. H. Hanford, one of its proctors; and the claimant appeared by its agents and by Mr. Lawrence Bogle, one of its proctors; thereupon the following proceedings were had and testimony offered: [59]

Libelant's Testimony.

[Testimony of F. O. Burckhardt, for Libelant.]

F. O. BURCKHARDT, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HANFORD.) What is your full name?

A. F. O. Burckhardt.

Q. Where do you live? A. Portland, Oregon.

Q. State what your position or connection is with the libelant in this case, the Alaska Pacific Fisheries.

(Testimony of F. O. Burckhardt.)

A. I am the vice-president and have charge of the Chilkoot cannery.

Q. Where is the Chilkoot cannery situated?

A. The Chilkoot cannery is situated on Chilkoot inlet about fourteen miles south of Skagway.

Q. In Alaska? A. In Alaska.

Q. How extensive is that cannery?

A. As to size of pack?

Q. Yes, sir.

A. Why, we have an average pack there of about 40,000 cases.

Q. Give us some idea of the situation of the cannery with respect to accessibility from navigable waters.

A. It is on Chilkoot inlet and we have steamers loading at the dock, and they have got to truck about fifty feet across the dock in order to get to the warehouse. The warehouse is a two-story frame building, corrugated iron roof.

Q. By steamers you mean deep sea vessels?

A. Deep sea vessels. [60]

Q. The fish are received there and treated and canned and packed ready for market and shipped right from that cannery, are they?

A. Yes, they are.

Q. Delivered from that cannery to the ship.

A. Yes, sir.

Q. Were you personally present during the season of 1912 at the cannery?

A. Yes, sir, all the time during 1912.

Q. State how complete the packing was done there

(Testimony of F. O. Burckhardt.)

at the cannery to condition the goods for market.

A. Well, all the goods that we had orders for were labeled and boxed; and those that we had no labels on were boxed unlabeled and piled away in the warehouse ready for shipment.

Q. Now, the fish were put in the cans—just state the whole process of packing salmon for market.

A. From the time they are received until ready to go out?

Q. Yes. I want to get it in the evidence, just the condition of the cans and cases and everything.

A. You want me to follow the fish from the time it is received?

Q. Yes.

A. The fish are delivered from the boats to the fish elevator, and from there on to the fish dock, and from the fish dock they are taken and run through the Iron Chink, and from the Iron Chink they go to the slimers and from the slimers to the fish cutters. And from there the one-pound tall cans are filled by machine, and the half-pound flats by hand labor. Then they go through the [61] crimper and after leaving the crimper they go through the exhaust box, steam exhaust box, and come out at the other end and go through the rolled seamers; from the rolled seamers they go into the retorts and are cooked. After leaving the retorts the cans are washed in lye and water and all defective cans are removed. The next morning, when it is cold, the cans are piled and tested for defective cans.

Q. Tell how that testing is done.

(Testimony of F. O. Burckhardt.)

A. The testing is done by the Chinese workmen. They have a piece of iron or a nail and test each can separately.

Q. Tell us all about that testing, what do they do with that nail?

A. They tap a can to see whether it is a perfect can or not.

Q. Make a hole in it?

A. No, they just tap it and tell from the sound of it whether the can is full or whether it is defective.

Q. Go on.

A. At the end of the season the cans are lacquered, and such cans as we have labeled, put on our label and before going into the cases they are again tested by the Chinese workmen for defective cans. The cans are then boxed and nailed and piled away ready for shipment, in the warehouse.

Q. Now are they just put in the box with the label on or are they wrapped? A. They are wrapped—

Q. With tissue paper?

A. No, just the labels on, no tissue wrapping. And during practically all this work I am personally present at the cannery. [62]

Q. Does that complete the preparation of the goods to go into the market, to go into the trade?

A. Yes, sir.

Q. Now, the pack of 1912, was that made up in the way you have described? A. Yes, sir.

Q. When was the pack finished ready for shipment? A. When were they ready for shipment?

Q. Yes, when was this all completed for that sea-

(Testimony of F. O. Burckhardt.)

son, so that these goods were ready for shipment?

A. About the middle of October, 1912.

Q. What was the condition there at the cannery as to protecting the goods after the pack was made up, during the time intervening until you took the goods away?

A. Well, we have a two-story warehouse. The lower floor is used for storing salmon and the upper floor is a box and can loft, and the roof is corrugated iron, and the building is absolutely dry.

Q. What opportunity would there be there for injury to the goods by dampness or dirt or coal-dust?

A. Absolutely no chance for the goods to get dirty or wet. I might say further, that these goods when they were in the case and I left the cannery, were in absolutely first-class condition.

Q. (Mr. BOGLE.) As far as you know.

A. I do know that they were in first-class condition.

Q. (Mr. HANFORD.) Were you present in Seattle when the goods brought down on the steamer "Jeanie," in January, 1913, were discharged at the Virginia Street dock? A. I was. [63]

Q. How soon after the arrival of the ship, or with reference to the time of discharging, did you see them?

A. I went down the morning that she commenced discharging. I think about nine o'clock.

Q. Had you received any information, before the ship arrived, with regard to the condition of the cargo on the voyage from there here?

(Testimony of F. O. Burckhardt.)

A. We had been notified by Mr. Swan that the "Jeanie" had some damaged salmon aboard.

Q. When did you get that notice?

A. That was the day prior to her arrival.

Q. Did Mr. Swan tell you that, or did he send you a note or how did you get the notice?

A. Mr. Swan was in the office.

Q. Were you present and heard his statement?

A. I was.

Q. Did he state in what manner he had received that information? A. I do not remember it.

Q. Repeat, as near as you can, just what he said about it.

A. Well, as near as I can remember, Mr. Swan made the statement that the "Jeanie" had some damaged salmon aboard. I think he stated that he had had a cable from Ketchikan, and he wanted us to be present, or have a representative present when she started unloading.

Q. Now, you say it was about nine o'clock in the morning when you were there at the ship at the Virginia Street dock? A. Yes, sir.

Q. Had they commenced unloading salmon at that time? [64]

A. They were unloading salmon at that time.

Q. Did you notice the condition of the goods as they came from the ship?

A. I went down to look at the salmon on board the ship, in the big hatch forward, and a great many cases were wringing wet and very dirty.

Q. That was the condition you saw when they

(Testimony of F. O. Burckhardt.)

were still in the ship? A. Yes, sir.

Q. You saw a great many cases. Give us approximately some idea what you mean by "a great many": I mean were they all or a few, just here and there?

A. No, they were not all of them; but as far as I could tell at that time, but I should say that it appeared that about half of the cases that were in view were wet and dirty.

Q. Did you remain there any time or participate in any way in the matter of discharging the cargo or segregating these cases of damaged salmon from the undamaged?

A. I was there for several hours, I think.

Q. What was done to them in that regard, with regard to segregating the wet cases from the others?

A. The steamship company had a representative there, Mr. Dawson, and Mr. Hall, representing the warehouse company, and this young gentleman over here, representing the insurance company.

Q. (Mr. BOGLE.) Mr. West?

A. Yes. And my brother. And it was agreed at that time that the cargo should be overhauled and put in condition by Mr. Horner. [65]

Q. During the time of discharging the cargo from the ship, or afterwards, did you inspect or observe the condition of the salmon, the cans in the cases, as well as the outward appearance of the cases?

A. You mean generally?

Q. Yes.

A. I made a number of trips to the warehouse where the salmon was being reconditioned, and saw

(Testimony of F. O. Burckhardt.)

them open cases that apparently were all right; when they got into them they found cans that were covered with coal-dust and some of the cans would be wet.

Q. Coal-dust on the cans inside of the cases?

A. Inside of the cases. The case, apparently from the outside, was all right.

Q. Was there any way in which that coal-dust could have settled down upon the cans before they were put in the case?

A. Absolutely no chance for it.

Q. When you went on board of the "Jeanie," the morning of her arrival in Seattle, did you observe anything in regard to the condition of the hatches or covering?

A. I went down and made an examination of the tarpaulins that had been on this forward hatch, and found that they were in bad condition, and a lot of very fine pin-holes, and I asked the captain how he happened to use tarpaulins of that sort, and he told me that he had requested new tarpaulins before she left on this trip north bound—

Mr. BOGLE.—I object as incompetent and immaterial.

Mr. HANFORD.—I think it is competent, the statement of the [66] captain, he representing the ship and owners.

A. —and he had been refused new tarpaulins by the owners.

Q. At that time did he make any further statement to you in regard to the condition of the ship, or any happening during the voyage?

(Testimony of F. O. Burckhardt.)

Mr. BOGLE.—I object to that as incompetent, immaterial and hearsay.

A. He told me that the ship had struck going through Wrangle Narrows, and as I remember it, laid there one full tide.

Q. You have knowledge of the business of the Alaska Pacific Fisheries corporation, in regard to the marketing and sale and disposition of their product? A. Yes, sir.

Q. Do you know how much there was, delay in marketing this consignment of salmon, by reason of the damaged condition and the necessary reconditioning and overhauling?

A. No, not offhand without investigating the records.

Q. Through what agency does the Alaska Pacific Fisheries dispose of their product?

A. Through Kelley-Clark Company.

Q. They are the sales agents? A. Yes, sir.

(Recess taken until 1:30 P. M.) [67]

Afternoon Session—1:30 o'clock.

Mr. F. O. BURCKHARDT, on the stand for cross-examination.

Q. (Br. BOGLE.) You are vice-president of the Alaska Pacific Fisheries? A. Yes, sir.

Q. Stockholder? A. Yes, sir.

Q. And you say you were in charge of the Chil-koot cannery in 1912? A. Yes, sir.

Q. You went up at the beginning of the season, did you? A. Yes, sir.

Q. And remained there for what length of time?

(Testimony of F. O. Burckhardt.)

A. Stayed there until we closed. I think about the middle of October.

Q. All your pack was up at that time, was it?

A. Yes.

Q. And ready for market?

A. Yes, everything was boxed and ready for shipment.

Q. Had any of it been shipped down?

A. Yes, a small amount of it had been shipped; I do not remember how many cases were.

Q. What was your total pack for that season, Mr. Burckhardt?

A. The total pack was 39,000 cases at the Chilkoot cannery.

Q. This shipment on the "Jeanie" was your first large shipment of the season?

A. No, we had had several shipments out of Chilkoot as large as that. [68]

Q. Was that the clean-up of your pack?

A. This was the clean-up of the cheaper grades of fish.

Q. What grade of salmon was this?

A. Well, I think out of Chilkoot at that time there was nothing but what is known as medium red or Cohoes on the Sound, we call them Silvers.

Q. That is a late fall fish? A. Yes.

Q. Is that red salmon?

A. Yes, that is what we call a medium red.

Q. Is all of your salmon boxed in the warehouse, Mr. Burckhardt, at the cannery?

A. You mean was it boxed before we left?

(Testimony of F. O. Burckhardt.)

Q. Is the boxing of the salmon done in the warehouse itself?

A. Yes, in the warehouse. At Chilkoot, for instance, we have two warehouses. The boxing is all done in the warehouse.

Q. And the salmon is stored, after being boxed, in the same warehouse where the boxing is done?

A. We have one warehouse in back of this warehouse from which we ship, and we aim to get all our salmon in the forward warehouse, in order to cut down the distance of trucking.

Q. Well, was all of that salmon in the forward warehouse, was all of it boxed in the forward warehouse and there stored?

A. No, part of this salmon, as I remember now, was stored in the rear warehouse.

Q. You stated that from the warehouse to the dock was a [69] distance of approximately 50 feet?

A. From the warehouse to the end of the dock, from the doors.

Q. That is from the forward warehouse, is it?

A. Yes.

Q. What would be the distance from the other warehouse?

A. Well, going from there we go right through the other warehouse, we do not go to the open at all, it is good trucking from the rear.

Q. Mr. Burckhardt, the libel alleges that you shipped 10,747 cases of salmon from Chilkoot on the "Jeanie." Now, do you remember when the balance

(Testimony of F. O. Burckhardt.)

of that salmon from Chilkoot was brought down on the steamers?

A. My recollection is that this cleaned up the Chilkoot pack, although I am not positive. If necessary I could get that information for you.

Q. Well, previous to that, if this cleaned up the shipment, there was some 29 thousand cases sent down previous to this salmon?

A. Most of the Chilkoot salmon had been shipped out on the "Humboldt."

Q. Was all of this salmon of the 1912 pack, was any of it left over from the 1911 pack?

A. 1911 pack? No, it was all 1912.

Q. Was any of this box material that went into this salmon left over at the cannery for the winter of 1911-1912, or was it all new material?

A. No, I think there is ordinarily some, always some box material left over from one season to another. The percentage would be very small, I would say not to exceed—out of our pack of 200,000 cases—I would say offhand [70] perhaps material enough for five thousand cases.

Q. Left over? A. Yes, sir.

Q. In testifying as to the prices and method of putting up salmon, you were testifying as to the general method in which all salmon is put up in Alaska? There is nothing peculiar or particular about the way you put up this salmon?

A. Well, I don't know, unless we consider that we are a little bit more careful than the average packer in putting up our salmon.

(Testimony of F. O. Burckhardt.)

Q. Same process, is it not?

A. Well, outside of care and consideration, it is probably the same.

Q. The method of putting up the salmon depends largely upon your Chinese contractor, does it not? Don't he have the actual labor in putting it up?

A. He furnishes the labor and he puts up the salmon as he is directed by the man in charge. While the general method may be the same, it does not necessarily follow that it would be put up as carefully in one cannery as in another.

Q. I understand that, but when you testified that the salmon was all in first-class condition, you mean that as far as you could say, in watching the salmon being put up, etc., it was apparently in good condition. You did not inspect every case of this salmon?

A. I do not mean that at all. I mean that I made personal examination of all cans, every can of salmon that went in there. [71]

Q. That went into this shipment?

A. Yes. When the salmon is being lacquered and labeled and boxed, I am on the job from morning until night.

Q. Are you the superintendent of this cannery?

A. Yes, sir.

Q. You were not present at the cannery when this salmon was loaded aboard the "Jeanie"?

A. No.

Q. Who was at the cannery at that time?

A. The watchman.

(Testimony of F. O. Burckhardt.)

Q. He was your only representative there, was he? A. Yes, sir.

Q. You state that you had been notified by Mr. Swan that there was some damaged salmon on the "Jeanie." Was there anybody present in your office at the time Mr. Swan gave you that verbal notice?

A. I think Mr. Roberts was there at the time.

Q. Mr. Roberts is connected with your company, is he?

A. He is the purchasing agent of the Alaska Pacific Fisheries. There may have been some one else, but I am not positive.

Q. For that reason you were on the lookout for the "Jeanie" and down at the dock shortly after she arrived?

A. My recollection is that we got a telephone message from Mr. Horner after we had started unloading.

Q. Well, Mr. Burckhardt, how much salmon had they unloaded when you arrived at the "Jeanie" at the Virginia Street dock?

A. Oh, I don't know. I do not suppose that they had unloaded more than five hundred cases when I got there; I cannot tell exactly at this time.

Q. You heard Mr. Horner testify this morning, didn't you? [72] A. Yes, sir.

Q. Was this salmon being unloaded from the main hatch forward?

A. When I got there it was.

Q. And the inspection you made was by looking

(Testimony of F. O. Burckhardt.)

down into the main hatch?

A. That particular inspection was, yes.

Q. And would that be the between decks of the vessel?

A. This was just below the main hatch, below the hatch covering.

Q. That was where you found the wet and dirty cases? A. At that particular time, yes, sir.

Q. Did you watch the unloading of this vessel from day to day?

A. I saw it different times. I guess I was there every day at some time or other.

Q. The damaged cargo, as it came out of the vessel, was segregated and placed in separate piles, was it not?

A. No, it was not. They attempted to do so, but—

Q. Who attempted to do so?

A. The warehouse people.

Q. You say they attempted to do so. Do you mean that they put aside what they considered to be damaged cargo?

A. They put aside what they thought was damaged. When we got up into the warehouse we found a lot of cases up there that were wet and had gone in as undamaged, and found a lot of cases that were not wet, and still contained, after being opened, damaged cans.

Q. You say "we found." Mr. Horner found them, didn't he?

A. Well, I was there when they opened up a lot of this stuff.

(Testimony of F. O. Burckhardt.)

Q. But as that cargo came out of the vessel, the warehouse people attempted to segregate damaged cargo from the [73] good cargo? A. Yes.

Q. Do you remember the number of damaged cases which were placed on the dock?

A. No, I do not remember definitely.

Q. Did you see any of the damaged cargo that came out of the vessel, except these portions that you have testified to that came out of the forward hatch?

A. Did I see any come out of the vessel outside of the forward hatch?

Q. Yes, that was damaged?

A. Yes, I saw salmon that came out of the after hatch in the same shape.

Q. That was after they had completed the unloading of the forward hatch?

A. I do not remember whether they had finished unloading the forward hatch before they went to the after hatch or not.

Q. They were not unloading both hatches at the same time, were they?

A. I do not remember whether they were or not.

Q. Did you inspect this salmon in the after hatch to see where it was coming from, the damaged salmon?

A. I simply went, as I did in the forward hatch, I went up on the ship and looked down and I saw a lot of cases that were black and wet.

Q. You were standing on the deck when you looked down there? A. Yes, sir.

(Testimony of F. O. Burckhardt.)

Q. Where was this salmon on the deck, the between decks or was it in the lower hold?

A. It was in the between decks, when I was there they had not [74] got to the lower hold.

Q. Did you see any other damaged salmon unloaded from the vessel, except from these two hatches? A. I do not remember that I did.

Q. Now, Mr. Burckhardt, when was this meeting between Mr. Dawson, yourself and Mr. West and Mr. Hall of the warehouse company, when was that held?

A. My recollection of it is that it was held, as near as I can tell, about 11 o'clock in the morning on the day of her arrival.

Q. On the day of her arrival? A. Yes, sir.

Q. How much cargo had been unloaded at that time?

A. I do not know how much had been unloaded. I should say a couple of thousand cases, perhaps. I do not know definitely how much had been unloaded.

Q. Altogether or of the damaged cargo?

A. No, I do not think more than a couple of thousand cases altogether.

Q. Do you remember how long it took this vessel to unload the cargo? A. No, I do not.

Q. Is it not a fact that practically all the cargo was out at the time of this meeting, Mr. Burckhardt?

A. No, it is not, according to my recollection. They started unloading that morning; I forget what

(Testimony of F. O. Burekhardt.)

time they started unloading. My recollection is that immediately after going down and inspecting this salmon, we got into communication with the insurance company, and that this agreement was made that very morning. [75]

Q. Why should you get in communication with the insurance company? Did they carry insurance on that cargo?

A. I do not know of any particular reason for getting in communication with them.

Q. Did they carry insurance on your cargo?

A. This insurance company?

Q. Yes.

A. I do not remember whether they had insurance on our cargo or not. The insurance end is handled by Mr. Roberts; he can tell you more about that.

Q. Do you remember the number of damaged cases on the dock at the time of this meeting?

A. No.

Q. You say it was agreed at that meeting between all parties that Mr. Horner should go ahead and recondition the entire shipment?

A. Recondition the cargo.

Q. Was your understanding of that, that that included the entire shipment of 29,000 cases or merely—

A. My understanding was it included everything that was damaged. The only way to find out what was damaged was to break open the case and find out whether it was damaged or not.

Q. Break open the entire 29,000 cases?

(Testimony of F. O. Burckhardt.)

A. Yes, sir.

Q. After Mr. Horner had overhauled and reconditioned the 2,000 damaged cases, did he call your attention to the fact that there was some cargo in the warehouse which was damaged?

A. I think he called our attention to it the day after he started reconditioning this cargo, as well as I can [76] remember.

Q. He called your attention to the fact that there was some damaged cargo which had been stowed in the warehouse as good cargo? A. Yes, sir.

Q. And did you authorize him then to go ahead and recondition that cargo?

A. I did not authorize him to do anything.

Q. Did you go and inspect the cargo? ,

A. Yes, sir.

Q. And you gave him no authority whatever?

A. I made my report to C. A. Burckhardt, who is president of the company.

Q. And you did not notify the owners or charterers of the "Jeanie"? A. I did not notify anyone.

Q. Was it your understanding at the time of this conference, Mr. Burckhardt, that the entire 29,000 cases were to be broken into and overhauled by Mr. Horner?

A. My understanding of it was that the cargo was to be put in the same condition that it was when it left the cannery, and in order to do that it was necessary to open every case of salmon.

Q. Is it not a fact, Mr. Burckhardt, that there was a number of cases, approximately 2,000, damaged

(Testimony of F. O. Burekhardt.)

cases and more, on the dock at the time of this conference, and that it was with reference to that 2,000 cases only that Mr. Horner was authorized to recondition? A. Absolutely not.

Q. That was not your understanding? [77]

A. No, sir.

Q. In fact, you say there had been only about 2,000 cases unloaded altogether at that time?

A. As well as I remember. As a matter of fact the suggestion that this cargo be overhauled and reconditioned by Mr. Horner, was not the suggestion of anybody connected with the Alaska Pacific Fisheries.

Q. Did you inspect this cargo after the same had been overhauled by Mr. Horner?

A. Well, I did not inspect all of it. I inspected part of it. The only way a man could inspect all of it would be to stay on the job from morning until night.

Q. I say after the overhauling had been completed?

A. Well, I do not know what you would mean by inspection after the job had been completed.

Q. What was the condition of the cargo after Mr. Horner had completed the work?

A. Mr. Horner put it into first class condition; he put it in the same condition we claim it was when it left the cannery.

Q. Did you make this examination of the canvas or tarpaulin which was over the forward hatch, at the time of your first visit to the vessel?

(Testimony of F. O. Burekhardt.)

A. I made it personally.

Q. How did you know that was the canvas which was over that hatch?

A. I don't know, only what the captain told me.

Q. The captain told you that was the canvas that was over the hatch?

A. He pointed it out, and I went down and looked at it. [78]

Q. That was one tarpaulin, was it?

A. Two tarpaulins.

Q. No more?

A. He claimed to have had two over there.

Q. Did you see them both? A. Yes, sir.

Q. They were both in the same condition?

A. Yes, sir.

Q. The captain also told you that the vessel had stranded in Wrangle Narrows?

A. He told me she had struck in Wrangle Narrows.

Q. Did he tell you when that stranding took place?

A. I do not remember, excepting on her trip north bound.

Q. Before he had taken any of the cargo aboard?

A. Yes, sir.

Q. Did he tell you where he stranded in Wrangle Narrows?

A. I do not think he named the exact spot where he stranded.

Q. Did he tell you he stranded on a mud bank?

A. He did not.

Q. Did he tell you how he got off?

(Testimony of F. O. Burckhardt.)

A. I think he said he laid there over one tide.

Q. And came off on the next tide?

A. And came off on the high tide.

Q. Without any assistance?

A. I do not know whether he mentioned any assistance or not.

Q. Did he mention to you that he received any damage by that stranding? A. By stranding?

Q. Yes, sir.

A. My recollection is that he told me that he struck going [79] through the Narrows, but that he did not know what the damage was.

Q. That is your recollection of what he told you?

A. Yes, sir.

Q. Did he tell you that he worked his pumps to see whether he was making water? A. No.

Q. Mr. Burckhardt, do you know where the salmon which was loaded at your Chilkoot cannery was stowed aboard the "Jeanie," what portion of the ship? A. No, I do not.

Q. Do you know from which cannery it was that the salmon received the greatest damage?

A. I could not tell you that without looking up the office records.

Q. Is the Chilkoot cannery located upon open water or in a sheltered harbor?

A. Sheltered harbor.

Q. How was the passage, after leaving Chilkoot, between Chilkoot and Shagway?

A. Why, they sometimes strike some fairly rough weather in there.

(Testimony of F. O. Burekhardt.)

Q. Do you know where this vessel proceeded after she left Chilkoot? A. No.

Q. How was the passage from Chilkoot to Gypsum? You know where Gypsum is?

A. Right down Lynn Canal.

Q. In the winter months, is that an exposed passage?

A. Not necessarily. I would not consider it so, no. Good [80] harbor in case there is any storm; there is a good harbor all the way down there. It is safe for a small gas-boat any time of the year.

Q. When you examined the salmon upon arrival here, was the damage apparently confined to the salmon which was underneath the hatch?

A. All I could see at that time was the salmon that was underneath the hatch, because that was the only salmon that was uncovered.

Q. You did not afterwards make any examination to see whether it extended out from the hatch, did you, the wet salmon?

A. You mean to the sides?

Q. To the sides or forward or aft.

A. Well, the salmon, as it kept coming up, as they got down into it, showed still water coming out, wet.

Redirect Examination.

Q. (By Mr. HANFORD.) Mr. Burekhardt, I understand you to say that the Chilkoot salmon in this shipment was of the grade known as Silvers?

A. Yes, sir.

Q. Do you know the market value of that grade of salmon at Seattle, in the month of January, 1913?

(Testimony of F. O. Burekhardt.)

A. I cannot tell you without refreshing my memory.

(Witness excused.) [81]

[Testimony of T. A. Heckman, for Libelant.]

T. A. HECKMAN, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HANFORD.) Mr. Heckman, where were you employed, and what was your position during the salmon packing season of 1912?

A. I was at Chomly, superintendent of the Chomly cannery, Alaska.

Q. Were you there during the entire packing season? A. Yes, sir.

Q. What time was the operations for that season completed?

A. Why, sometime in the latter part of October; I am not certain as to the exact date.

Q. I wish you would give us a general description of that plant, how it is situated and the capacity of it.

A. Well, it is situated on Chomly Sound, and our pack there for that season, I think, was 85,000 cases.

Q. Is the cannery and storage rooms accessible by water navigation direct? A. Yes, sir.

Q. The fish are received there?

A. The fish are received at the cannery and go right through the process.

Q. And the cases delivered there to sea-going vessels? A. Yes, sir.

Q. State what its construction is, as regards its

(Testimony of T. A. Heckman.)

being well constructed for the preservation of the product undamaged?

A. Well, we have a wharf about 200 feet long, and we have a warehouse on that wharf, one-story warehouse for the storage of salmon, I think, 120 feet long. We have two [82] warehouses. One double warehouse building; the lower part is used for storing salmon, and the upper part of it for a can loft and empty boxes; and the other warehouse, the one-story warehouse, we use for storing salmon altogether.

Q. Well, was it inclosed and tight and well adapted to keeping clean and dry?

A. At that time the building was in good condition, absolutely.

Q. What opportunity would there be for damage by water or coal-dust in the cannery?

A. None whatever.

Q. State, if you know, what the condition of the product for that season was when it was packed, as being in condition *fit* for market.

A. It was in absolutely good condition, first class.

Q. What was the grade or quality of the salmon that was packed there and shipped out on the "Jeanie"?

A. The same as the rest of the pack, it was all the same.

Q. How would that be graded in the market?

A. You mean in what way?

Q. I want to know what the product was, what kind of salmon was it, and how would it be graded in

(Testimony of T. A. Heckman.)

the market, as first, second or cheaper grade?

A. Well, it was chums and pinks; they are all a cheap grade of fish.

Q. Do you know what the market value was in Seattle in January? A. No, I do not.

Q. What experience have you had in the salmon canning business?

A. Oh, I have been in the business about—in fact it is all [83] I have done for thirty years, I guess.

Q. What is the fact as to canned salmon, packed as these were that were shipped on the “Jeanie,” as to having any inherent tendency to deteriorate when being transported in a vessel by water?

A. None whatever.

Q. Are you acquainted with Captain Corby, master of the “Jeanie” on that trip?

A. Yes, I am, I know the captain.

Q. Did he ever make any statement to you as regards the condition of this consignment when they were taken on board the vessel from Chomly?

A. Captain Corby told me that this salmon was the best salmon they ever have taken out of Alaska, or some of the best, that there was none any better, that is as far as the boxes were concerned on the outside. Of course, he did not know anything about the contents. He said that the cases were in absolutely good condition.

Q. Can you fix the time and place when he told you that?

A. It was last week, sometime, I believe, that he told me that.

(Testimony of T. A. Heckman.)

Q. Anybody else hear him tell it to you?

A. No, I don't believe there was anybody else there at the time. There were some friends of his there at the time, but I did not know them; I do not recollect their names.

Q. What place, where did you have that conversation?

A. Well, we had it out in front of the Horseshoe saloon.

Q. On the sidewalk?

A. Near the office there, I met him on the sidewalk, out on the curb there, and we were talking.

Q. Were you here in Seattle when the "Jeanie's" cargo was [84] discharged in January?

A. No, I was not.

Q. Did you see these cases of salmon during the time that Mr. Horner was working with them reconditioning them?

A. I saw some of them, yes. I was down there several times.

Q. What part did you see? Did you see any of them before they went into the warehouse?

A. No. They were all in the warehouse when I got here. I was in San Francisco when they were taken out. He was working on the salmon when I got back.

Q. Now, state what the condition was of those that you saw, as far as you could observe.

A. Well, there was coal-dust on them, and where cases would apparently look all right outside, the labels had been damp and stained and blackened by the coal-dust.

(Testimony of T. A. Heckman.)

Q. You saw that, did you? A. Yes, sir.

Q. As they were then, without being reconditioned, were they fit for market? A. No.

Q. Were any of the boxes or cases so wet or soiled as to be unfit for use to repack in? A. Yes, sir.

Q. Can you give an idea whether few or many?

A. I could not tell you just how many. I was in there only a couple of times while they were doing the work. I was busy with other work and went down with Mr. F. O. Burekhardt a couple of times I remember of, and some of the cases looked practically all right, but when opened, they found bad cans on the inside, dirty cans. Cans dirty with [85] coal-dust where the dust had come through. It looked very much to me like the water had got in on the dry dust that was on the side of the boat or on her deck or underneath her deck, and that it had got damp and had dropped down on the boxes and run through the cracks on the side of the boxes.

Cross-examination.

Q. (Mr. BOGLE.) You were not at the cannery at the time these salmon were loaded aboard the "Jeanie"? A. No.

Q. Speaking of the dry dust that was on the sides of the ship, you mean what kind of dust?

A. Coal-dust.

Q. You know that was there?

A. I do not know it was there; I know I saw it on the boxes when they came off the ship.

Q. Did anybody suggest to you that possibly that was the way the damage occurred, when you were at

(Testimony of T. A. Heckman.)

the dock? A. No.

Q. You do not know, then, that there was any dirt or dust aboard the ship?

A. I know there is; I have been aboard of her.

Q. Always?

A. Not always, but at other times I have been aboard the ship.

Q. You were not aboard of her at this time?

A. No, I don't know; she may have been very well cleaned out for all I know, but I know she has been carrying coal right along. [86]

Q. This was not suggested to you as a possible way in which the damage occurred, by Burckhardt, or any other interested party? A. No.

Q. At the time you went up to see this salmon as it was being overhauled by Mr. Horner, did you stay there for any length of time watching operations?

A. Oh, I was probably there about an hour sometimes or an hour and a half, something like that, walking around watching them.

Q. Were any of these cases opened up which were found to be in perfect condition when opened up?

A. Yes, on the outside, perfect condition on the outside.

Q. Were any of the cases opened up which were in perfect condition outside and inside, after they had been opened up?

A. I did not notice any at the time there.

Q. At the time you were there every case opened up was damaged?

(Testimony of T. A. Heckman.)

A. More or less damaged cans on the inside there, dust and stuff.

Q. That was during the hour that you watched?

A. Yes.

Q. On both occasions? A. On both occasions.

Q. You did not see them open up a single case—

A. I did not see them open up a single case that was perfect.

Q. You went there with Mr. Burekhardt, did you?

A. I went with Mr. Burekhardt twice, and I was down there myself alone, I think a couple of times after that. [87]

Q. You went down for the purpose of finding out the condition of this salmon, did you?

A. No, I did not.

Q. Just out of curiosity?

A. No, I went down there on some other business.

Q. And spent an hour watching them recondition them?

A. And I went in there and saw what they were doing there with the salmon.

Q. You have seen them recondition salmon, before, have you not? A. Yes, sir.

Q. Is it an unusual thing for them to be reconditioning or overhauling salmon on its arrival at Seattle?

A. Not in big quantities like that; I have seen them recondition small batches of salmon.

Q. You say the captain of the "Jeanie" made this statement to you about the condition of the salmon about a week ago?

(Testimony of T. A. Heckman.)

A. I met him about a week ago; and he has made it, not only then but made it a half dozen times during the winter when I have seen him, because I met him very often.

Q. How did the conversation happen to come up to this subject? Had you been requested to see the captain to get a statement out of him?

A. No, I had not. The last time when this came up was when this case was coming up, that I spoke about it. When he came down last fall he came and told me himself, without my ever asking him a question at all whatever, that the salmon was in good condition when they left the cannery, that is the boxes were. Of course he did not know anything about the contents of the boxes. He said the boxes were perfectly dry and in good shape. [88]..

Q. When they left the cannery?

A. When they left the cannery. And when I saw him a week ago, why, I asked him then if he remembered telling me this and he said yes, he says, it is a fact.

Q. This conversation took place in front of the Horseshoe saloon, did it?

A. I do not recollect whether the Horseshoe—

Q. Quite sure it did not take place inside by the bar? A. No, it was outside on the curb.

Q. Had you just come out of the bar?

A. Well, I believe we did have a drink.

Q. What is the distance of your warehouse, where this salmon was located at Chomly, to the end of the wharf where the vessel would be lying?

(Testimony of T. A. Heckman.)

A. Why, it is 16 feet from the front of the dock to the 1st warehouse, the warehouse that runs along the dock.

Q. Was all of this salmon loaded from the first warehouse? A. No.

Q. What was the distance to the second warehouse from the dock?

A. From the warehouse on the dock to the building that run endwise on to this warehouse is twenty feet.

Q. That would be a haulage of twenty feet from the warehouse to the ship?

A. Twenty feet from the cannery to the small warehouse and then from the small warehouse to the ship.

Q. Was it a covered space from the cannery to the warehouse? A. No.

Q. What was that distance, twenty feet, you say?

A. About twenty feet.

Q. That was an open space? [89]

A. That was an open space.

Q. Open space from the end of the warehouse to the end of the dock was about 16 feet?

A. Yes, sir.

Q. Was this the last of the pack which you sent down on the "Jeanie," if you know.

A. No, there was more there.

Q. When did the balance of it come down?

A. Why, I don't remember when it came down. A good deal of it came down in the spring on the "Humboldt."

(Testimony of T. A. Heckman.)

Q. In the spring, about what month?

A. Oh, along in April, the middle of April.

Q. The last of your shipments came down on the "Humboldt," did they?

A. Well, all except what the "Jeanie" brought.

Q. That salmon was all cheap grades, dog salmon and humpbacks. A. It is chums.

Q. Chums are dog salmon are they not?

A. No, they are called chums.

Q. When they are packed, but before that they are called dog salmon?

A. No, it is a local name for them, but the regular name is chum salmon.

Q. And the pinks are humpbacks?

A. Yes, the pinks are.

Q. All that you know, Mr. Heckman, about the damage to this salmon was what you saw on one or two occasions when you were at the warehouse where it was being overhauled?

A. Yes, that is all. [90]

Q. On the two or three occasions when you were up there? A. Yes.

Q. And you personally know nothing about the condition of the salmon when it left Chomly on the steamer? A. No.

Q. Do you know where the salmon was loaded on the steamer? A. At the cannery?

Q. Yes, that is what portion of the steamer it was loaded on? A. No.

Q. The Chomly cannery is located near Ketchikan, is it not?

(Testimony of T. A. Heckman.)

A. About thirty-five miles from Ketchikan.

Q. Is there any open stretch of water between Ketchikan and the cannery, or is that sheltered?

A. It is sheltered for any sea-going boat.

Q. Experience some pretty heavy weather in there in the winter, don't they?

A. No, not for this vessel.

(Witness excused.) [91]

[Testimony of W. J. J. Roberts, for Libelant.]

W. J. J. ROBERTS, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Hanford.) What business connection have you with the Alaska Pacific Fisheries?

A. I am purchasing agent for the company; also handle their insurance.

Q. Were you acting in that capacity last year, in the winter of 1912-1913? A. I was.

Q. Do you know Mr. Swan? A. Yes, sir.

Q. What is his full name? A. Walter F. Swan.

Q. Do you know what connection he had with the steamer "Jeanie" at that time, in January, 1913?

A. Yes, I understand he had her under charter.

Mr. BOGLE.—I object unless he knows. I do not know that it is material.

Q. Well, do you know that he acted in the business of the steamer?

A. I know he had her under charter, for the reason I wrote his insurance on his freight moneys and his freight earnings on the "Jeanie."

Q. Were you present in the office of the Alaska Pacific Fisheries when he came there and made some

(Testimony of W. J. J. Roberts.)

report about the cargo before she arrived?

A. Yes, I was there.

Q. Who else was present when he came?

A. Why, Mr. F. O. Burckhardt was there; I do not remember whether Charles A. Burckhardt was there or not. [92]

Q. What statement did Mr. Swan make about it?

A. He stated that he had been advised by wire that there was some damaged salmon on board and suggested that I notify the insurance companies, that carried the insurance on the cargo.

Q. Did you act on that suggestion?

A. I did. I notified F. A. Frederick, the general agent for the company carrying the insurance.

Q. When was that with reference to the time of the arrival of the "Jeanie"?

A. My recollection is that it was about two days before she got in, possibly three days.

Q. After the arrival of the "Jeanie," did you have any conversation with her captain?

A. Yes, I did. I asked Mr. Swan to send the captain in as soon as he came.

Q. What is the captain's name?

A. Captain Corby.

Q. Did he come and did you have an interview with him?

A. Yes, he came up very shortly after the steamer arrived; I think shortly after the office opened in the morning and I asked him with regard to the damage and how it was caused, and he said that the water got in through the hatches. I asked him if

(Testimony of W. J. J. Roberts.)

he did not have his hatches properly battened and he said he had but the tarpaulins were old and leaked; and he also stated that he asked for new tarpaulins but had not received them.

Mr. BOGLE.—I object to that latter statement as being hearsay.

Mr. HANFORD.—I think it is relevant.

Q. Did he make any further statement in regard to the condition [93] of the ship?

A. In regard to the condition of the ship? Not that I can recollect at this time.

Q. Did he refer you to anyone else to give you information about that?

A. Oh, he did, not *not* at this particular time; it was at another time, later on.

Q. Can you fix the time of it?

A. It was about the next trip of the "Jeanie," probably about thirty days later, and would bring it in February sometime, and I asked him to give me some information in regard to the "Jeanie's" condition. He said that he could not do it, that he could not say anything against the ship at all. And he said he knew which side his bread was buttered on, but if you want to find out about her go to Captain Jensen, he knew her thoroughly.

Q. Did he in either of these conversations or in any conversation, state anything to you in regard to the events of the trip going north or coming back?

A. Yes, he told me that they had stranded going north, and I asked him if he had had a survey and he said not. And I asked him if it was before he had

(Testimony of W. J. J. Roberts.)

taken on any cargo of salmon and he said it was. And when I asked why he did not hold a survey he said he did not think he was damaged.

Q. Did he make any statement to you in regard to the condition of the pumps?

Mr. BOGLE.—I object to this testimony as not being the best testimony; the captain is available and you can call him as a witness and get his direct testimony. [94]

A. I don't remember anything.

Q. Did you learn from him anything about the cargo that was carried in the ship going north?

A. Yes. He carried coal going north, bulk coal.

Q. Did he tell you when and where it was discharged?

A. He did, but I do not recollect where it was discharged. And I asked him if he had any of our cargo on board when he went to Yes Bay and he told me he had the Chilkoot cargo on board, and they had some very heavy weather going to Yes Bay.

Q. Did you learn from him whether he had taken out all the coal from the ship before the salmon was taken in?

A. No. My recollection is that it was not all taken out. There was some in the hold aft. He had some of the salmon in. I do not know whether it was after the Chomly cargo was in, but I am sure it was after the Chilkoot cargo was on board that he unloaded some of this coal.

Cross-examination.

Q. (Mr. BOGLE.) What insurance did you carry

(Testimony of W. J. J. Roberts.)

on the "Jeanie," Mr. Roberts?

A. You mean for Swan?

Q. Yes.

A. Why, we carried insurance on his freight money; he insured his freight money on the north and south bound trips.

Q. Did he lose any of his freight money on this voyage? A. No, not that I know of. [95]

Q. Then what was your interest in interviewing the captain of the vessel, as an insurance man?

A. Well, I was handling the insurance for the Alaska Pacific Fisheries, and our policy only covers damage caused by sinking, stranding, burning or coming in collision; it does not cover any loss caused by leaking, leaking in her decks or taking in water, unless she sinks, is stranded, burns or comes in collision with some object other than water. And my reason for seeing the captain was Mr. Frederick stated there was no loss under out policy.

Q. Mr. Frederick represented the underwriters, did he?

A. Yes, the underwriters of the cargo.

Q. Had he previously seen the captain?

A. He had not.

Q. How did he know that there was no loss, how did he know how the loss had occurred?

A. From telegraphic reports. They keep in close touch with these matters; he usually knows before a vessel reaches port as to the cause of any damage. For instance, he would know whether she had been wrecked or come in collision, or whether she had

(Testimony of W. J. J. Roberts.)

just taken water in through her hatches or deck seams.

Q. Her policies covered ordinary perils of the sea, Mr. Roberts?

A. Only the perils that I have enumerated.

Q. Only those perils?

A. Yes. It is what is called an English form of policy.

Q. The ordinary form of English policy, is it?
[96]

Q. You did not collect any insurance on that policy for damage to the cargo? A. No.

Q. You put no claim in?

A. No, we simply notified Frederick that the cargo was damaged. He said we had no claim.

Q. Has Frederick any interest in this litigation?

A. No, sir.

Q. The underwriters any interest in this litigation? A. None whatever.

Q. You made no formal claim against the underwriters? A. No.

Q. That was your sole interest in interviewing the captain of the vessel, to find that out. A. Yes.

Q. You are still connected with the Alaska Pacific Fisheries? A. Yes, sir.

Q. Do you remember where Mr. Swan said he had received the wire, stating that there was some damaged cargo aboard the "Jeanie"?

A. He was in our office in the Mutual Life building.

Q. I mean where the wire was sent from.

(Testimony of W. J. J. Roberts.)

A. Oh, no, he did not state; in fact I did not ask the question.

Q. Do you know whether or not she made any other call after leaving Ketchikan?

A. Not that I am aware of. That is something I would not know about.

Q. The Chomly and Yes Bay shipments were taken on board [97] in the neighborhood of Ketchikan, were they not?

A. Well, I understand Chomly is about 60 miles from Ketchikan, and Yes Bay is about forty. I may be mistaken in regard to the number of miles, but not very far.

Q. Is there any exposed water between Chomly cannery and Ketchikan or Yes Bay cannery and Ketchikan?

A. I am not familiar with the waters.

Q. You are not familiar with the trip made by the "Jeanie"?

A. No, I have never been there; all I know about it is from reports I have read of it.

Q. You state that the captain told you that the water got in through the hatches causing the condition of the—because of the condition of the canvas or tarpaulins? A. Yes, sir.

Q. Did he state through what hatches the water had gotten in?

A. No, he did not. But I was at the dock there when they were unloading the cargo.

Q. Did he state to you that all the damage occurred through water coming through the hatches?

(Testimony of W. J. J. Roberts.)

A. No, he did not.

Q. Did he say that any water came through the deck of the vessel, or that she had opened up any of her seams through stress of weather? A. No.

Q. Did he tell you in what manner the hatches were fastened and secured before the vessel left Ketchikan and before she left on the voyage with this cargo aboard?

A. No, he did not. He just made the statement when I [98] asked him, I says, "How did the water get through the hatches, were they not properly battened"? "Yes," he said, "but my tarpaulins were old."

Q. In order to take water through the hatches, you would have to take seas over the deck, the deck would have to be awash before she would take water down the hatches? A. Yes, sir.

(Witness excused.)

Hearing adjourned until 10 A. M. February 19, 1914. [99]

[Testimony of W. T. Isted, for Libelant.]

Seattle, February 19, 1914, 10 A. M.

Present: Judge HANFORD, for the Libelant.

Mr. LAWRENCE BOGLE, for the Claimant.

W. T. ISTED, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HANFORD.) What is your full name?

A. W. T. Isted.

Q. You live in Seattle? A. Yes, sir.

Q. What is your business or occupation?

(Testimony of W. T. Isted.)

A. I am adjuster of fire and marine losses and appraiser of damaged merchandise.

Q. Did you see the cargo or any part of the cargo of salmon brought from Alaska on the steamship "Jeanie" in January, 1913? A. Yes, sir.

Q. Can you fix the date approximately when you observed it?

A. Somewhere around the 29th of January, a year ago.

Q. That was after all the cargo had been taken out of the ship?

A. That was after all the cargo had been taken out of the ship.

Q. Where was it when you saw it?

A. There was a large part of it on the Virginia Street dock, and the greater part of it was in the warehouse across the street.

Q. Was there any work being done on it then?

A. Yes, sir. The cargo on the dock was being taken out of the cases, and they had a lacquering machine there [100] relacquering the cases. And they had, I guess, ten or twelve girls wiping the cans and putting on new labels. And then they were packing it in new cases. Of course there was a lot of it over in the warehouse there that nothing was done to it at that time.

Q. If you noted anything in regard to the condition of the cans or cases, I wish you would state just what you did observe.

A. Well, the cases were all discolored, that is about 1250 of them, approximately, were very badly discol-

(Testimony of W. T. Isted.)

ored; they were black. And then the cases that were in the warehouse; I opened probably twenty-five or thirty cases, scattering in different parts of the warehouse, and they were covered with coal-dust; and we took the tops off the cases and the cans inside were covered with dust. In some cases there was a great deal more coal-dust than in other cases. It was light and you could take your hand and wipe it all off. The boxes were in terrible shape, the boxes on the wharf.

Q. The labels on the cans, what did they show?

A. Of course some of the cans were rusty, and they were wiping them off and relacquering them. Of course I did not count them, but the man on the dock there, Horner's foreman, said—

Mr. BOGLE.—I object to what the foreman said as incompetent.

Mr. HANFORD.—Do not repeat what the foreman said.

Q. This blackness that you speak of, was that all dry or was it in some instances dry and other instances wet?

A. The cases were soaking wet that were black, and in [101] some cases the coal-dust on the cases that we opened was wet. The majority of the cases in the warehouse were covered with coal-dust.

Q. Dry?

A. Dry. Yes. Take a handkerchief and wipe it all off.

Q. How were these cases as to being tight or open or cracks that would admit the sifting of dry dust inside?

(Testimony of W. T. Isted.)

A. Well, they were regular salmon cases. In the corner, I should imagine there is about an eighth of an inch where the side of the case comes up to the top of it; of course coal-dust could get in through that opening. They are not waterproof, you know, these cases.

Q. What would you say in regard to the condition of these cases, or the cans, as to being marketable without being reconditioned?

A. Why, it would be foolish to put these wet cases out on the market, for the reason that by the time they reached the consumer, the cases would have been blown and other cases were so badly discolored that if you sold them to a retailer and the retailer attempted to put them out over his counter to the trade, you would have had to have sold them at a loss. The retailer would have complained and probably would not have taken them, as damaged goods or something.

Q. These particular cases that you opened, what was the apparent condition on the outside? Did they show damage on the outside before you opened them?

A. Yes, there was a great many of them stuck up, that looked damaged. And then some of them that looked O. K. I had men pull out of the tier and open up, while [102] the exterior appearance looked good, the inside was covered with coal-dust.

Cross-examination.

Q. (Mr. BOGLE.) Mr. Isted, who sent you down there to examine this cargo?

(Testimony of W. T. Isted.)

A. Roberts. Roberts asked me to go down there. He did not know whether it would be an underwriter's job, but to go down and survey and make report.

Q. That is W. J. J. Roberts of the Alaska Pacific Fisheries?

A. He is the Roberts that placed the insurance on it, W. J. J. Roberts.

Q. Did you make a survey and give a report?

A. Yes, sir, I did.

Q. Have you a copy of that report?

A. No; he had one in the office.

Mr. BOGLE.—I would like to have a copy of that report. If he has made a written report of his examination of this cargo I would like to have it.

Mr. HANFORD.—I think you ought to have called for it. It would not be competent evidence for us.

Mr. BOGLE.—I will make formal demand.

Mr. HANFORD.—I will ask Mr. Roberts to furnish it for him if he can.

Q. You said you examined this cargo about the 20th of January, 1913?

A. Offhand, without having the papers with me, yes.

Q. Approximately.

A. Approximately, within two or three days.

Q. At that time, Mr. Isted, had all the salmon been unloaded [103] from the "Jeanie"?

A. Yes, sir.

Q. And a portion of the salmon was still on the dock. Did you keep any record of the number of

(Testimony of W. T. Isted.)

cases that were left on the dock?

A. No. I simply took the word of Mr. Horner's foreman, as I was going to tell you.

Q. These cases all showed damage from being wet, didn't they?

A. They were all wet and they were covered with coal-dust as well.

Q. But these all showed exterior evidence of damage?

A. They all showed exterior damage, being wet, these cases on the dock.

Q. You say that the biggest part of the shipment was in the warehouse. Did these cases show any exterior evidence of being damaged, except this fine coal-dust which you saw?

A. There was cases scattered here and there through it that were stained, like as though stained by water.

Q. Had been wet?

A. Had been wet. A corner of a box or the side of it, something of that sort.

Q. Could you give us any idea, Mr. Isted, approximately the number of cases that you found in the warehouse, which showed them all being wet or having been wet?

A. No, I could not do that, for the reason that they were stored in two different places in the warehouse. We simply climbed over them and went down through the passageways. I paid more particular attention to the [104] cases that looked soaked for the reason that if there was any damage there we

(Testimony of W. T. Isted.)

wanted to know it. It would be impossible, Mr. Bogle, to say how many, or give an idea.

Q. Was the proportion large or small?

A. Very small, very small.

Q. The large majority of these cases in the warehouse apparently from the outside were all right, were they?

A. No, they were dirty looking, as I say, I took my handkerchief and wiped the tops of the cases off and the sides, to see what it was. The handkerchief showed it was just black.

Q. That was the only exterior evidence of damage, this loose black dry dust?

A. Loose, black dust of some kind.

Q. That could be wiped off with a dry cloth, could it?

A. It could be wiped off, but the box would still look damaged.

Q. It would show some evidence of being dirty?

A. It would show some evidence of smoke or something of that sort.

Q. Now, Mr. Isted, I did not quite understand what you meant in saying there were approximately 1250 cases discolored, was that out of the pile that was on the dock? A. These were on the dock.

Q. You did not give us any estimate of the cases which were damaged or discolored in the warehouse. I understand you could not approximate it.

A. I could not approximate that.

Q. And out of this shipment you opened between 25 and [105] 30 cases— A. That looked good.

(Testimony of W. T. Isted.)

Q. What damage did you find to these 25 or 30 cases, were they all damaged inside?

A. They were covered with coal-dust.

Q. All of them, every one you opened?

A. The greater majority of them. I did not keep tally of them. I just went through it the same as we would when we agree of damages with a man for a loss, picking one here and there.

Q. Did you find any of these cases which were not damaged at all, Mr. Isted?

A. There was one or two, Mr. Bogle, that were not covered with dust.

Q. These cases that you examined, it was all dry dust, was it not? A. It was dry dust.

Q. Mr. Isted, what experience have you had in the sale or disposal of salmon, to either wholesale or retail trade? Have you ever had any experience?

A. Yes, I handled the cargo of the "Batsea" (?) forty or fifty thousand cases. She was ashore and under water. I disposed of that in British Columbia. And we had the P. P. N. on the "Cottage City" once, and I handled that for the owners.

Q. That was all damaged cargo?

A. All damaged cargo, yes.

Q. You were not in the salmon business to any extent, you have not handled any packs?

A. No, simply as the underwriters turn the loss over to us. [106] It is up to us to dispose of it, arrange a sale or agree on damages with the assured, or something of that sort.

Q. These wet cases, what would be the objection of

(Testimony of W. T. Isted.)

putting these on the market; there would be no damage to the salmon itself?

A. Why yes, after cases are wet with salt water, there is more or less corrosion, and inside of thirty or sixty days they commence to swell, and the minute the air gets at them they pop.

Q. The cases?

A. The cans, the contents of the cases. The case itself will last forever, you know, except when you get to handling them and the nails are rusty and they will come out.

Q. The case being wet or dirty does that hurt the product?

A. It does. The sale of it, Mr. Bogle, because if you sell any merchant a damaged case, he will immediately put in a claim for damages; a great many of them will not accept them.

Q. That would be if the product itself, that is, the labels or something, damaged?

A. The outside appearance of the case. A man goes to work, take a salmon broker, and he will sell salmon, and if it comes dirty to some country merchant, he will object to it; something of that sort. We always in losses make allowance for that.

Q. What would be the effect of fresh water on cases, Mr. Isted, would that also blow the cans?

A. No. My experience is that fresh water does not damage [107] the goods seventy-five per cent as much as salt water. I do not know why it is, except the action of the salt on the tin eats into it quicker.

Q. Did you make any examination to determine

(Testimony of W. T. Isted.)

whether or not this damage was a salt-water damage or fresh-water damage?

A. No, sir, I did not. I made no test whatever.

Q. You do not mean to say that you made a minute examination of the entire shipment? A. No.

Q. As I understand you, you went down to the dock at the request of Roberts and found some 1250 cases, approximately, discolored and wet, on the dock. A. Yes, sir.

Q. And went into the warehouse and examined some twenty-five or thirty cases and found coal-dust on the majority of them?

A. I examined the whole cargo, went right through the whole cargo, went down the alleyways, the place where the trucks go, and sized up the entire cargo.

Q. Well, how was this cargo stacked, three or four boxes high?

A. About five tiers high, five to the tier.

Q. Five boxes. You did not examine each box separately?

A. No, I just simply walked along. I noted this one bad; this one not quite so bad; and we climbed over the top of them and over the center of them, and I took a case here and a case there.

Q. How long did you spend in this examination?

A. About an hour or an hour and a half.

Q. Did you find out of the 29,000 and some odd cases, any [108] amount of good cases, in the course of your examination?

A. Yes, there were lots of good ones, Mr. Bogle; they were not all damaged.

(Testimony of W. T. Isted.)

Q. The damage out of the 29,000 was small in percentage, was it not?

A. Well, offhand, I should say that probaly it was about half and half discolored and dirty..

Q. That there were 14,000 cases discolored?

A. About that; that is, looking at them as I could.

Q. Mr. Isted, could you approximate the number of cases which had been damaged or discolored by water, that is solely by water, and the number of cases which were damaged or discolored either wholly or partially by coal-dust?

A. Offhand, Mr. Bogle, I should say of the cases in the warehouse, there was probably ten per cent that were discolored here and there.

Q. By discolored you mean water discoloration?

A. Showed signs of water being on them.

Q. Any signs of coal-dust on that ten per cent?

A. Oh, yes, the coal-dust being on the case they blackened them more.

Q. All that ten per cent, they all showed coal-dust damage?

A. They all showed coal-dust damage. And probably thirty or forty per cent of the remainder were dirty-looking.

Q. What was that from?

A. I would say from this black or coal-dust.

Q. Did you make any minute examination to determine whether it was or was not coal-dust?

A. No, sir. I simply took my handkerchief and went over the [109] cases; and cases that looked all right I would take my handkerchief, and it got

(Testimony of W. T. Isted.)

pretty black before I was finished with it.

Q. Mr. Isted, your examination was cursory, you did not examine each case top and bottom and sides?

A. Oh, no, I could not.

Q. And the way they were piled you could only see the ends of the cases? A. Ends of the cases.

Mr. BOGLE.—That is all, unless we get this report; in that case I may want to examine him again.

Redirect Examination.

Q. (Mr. HANFORD.) Do you know Walter Swan?

A. Yes, sir.

Q. What connection did he have with the "Jeanie" in January, 1913?

A. He was agent and operated the vessel.

Q. Did you have any conversation with him about the damage to the Alaska salmon?

A. Yes, I got my information from him.

Mr. BOGLE.—I object as improper redirect examination.

Mr. HANFORD.—I will recall him to prove admissions by Swan.

Q. What statement, if any, did he make to you in regard to or an attempt to explain the coal-dust or coal-black on this cargo?

Mr. BOGLE.—I object, on the ground that Swan is not a party to this suit, and any statement made by him to Mr. Isted is not competent evidence against the claimant and respondent. [110]

Mr. HANFORD.—We claim he represented the owner *pro hac vice* on that voyage.

(Testimony of W. T. Isted.)

Mr. BOGLE.—He is not a party to this suit.

Mr. HANFORD.—No; the ship is not a party except as being the medium through which we reach the owners.

Mr. BOGLE.—The real owner is the Alaska Pacific Fisheries.

Mr. HANFORD.—The owner for the voyage would be the charterer.

Q. State, Mr. Isted, if he made a statement to you, what he did say about the coal?

Mr. BOGLE.—I object, unless it is shown when the statement was made.

Q. Fix the time.

A. Well, after I looked at the salmon, I saw, Mr. Swan, to get what information I could as to how it was damaged, and Swan said that they had some coal for some cannery, I cannot think of the name of it, that they were to have delivered before they loaded this salmon, but for some reason they did not go there, and they went—

Mr. BOGLE.—Was Mr. Swan on board the vessel?

A. No, he was not to my knowledge.

Mr. BOGLE.—I object.

Mr. HANFORD.—I do not think that is competent.

Q. But as to the fact whether she did carry a cargo of coal in bulk. Did he make a statement about that, that is what I should like to know?

A. Yes, he said there was this coal on the vessel that she was to deliver to a call port and she did not

(Testimony of W. T. Isted.)

go there. Then he said there was this coal in bulk on the vessel and was discharged after part of the salmon was taken aboard. [111]

Mr. BOGLE.—I want my objections to run to all this testimony because Swan was not on board the vessel and had no personal knowledge when this coal was discharged. I want my objection to run to all this as being incompetent.

Q. (Mr. BOBLE.) When did Swan make this statement to you?

A. On the afternoon that I examined this merchandise.

Q. Mr. Swan resides in Seattle? A. Yes, sir.

Q. He is not an officer of the ship?

A. Not to my knowledge; he was just the charterer.

Mr. BOGLE.—I renew my objections.

(Witness excused.)

Recess taken until 2 P. M. [112]

[Testimony of R. E. Small, for Libelant.]

Afternoon Session—2 o'clock.

R. E. SMALL, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HANFORD.) What is your name?

A. R. E. Small.

Q. What business are you engaged in, or what institution are you connected with?

A. Kelley-Clark company.

Q. What is the general business carried on by that concern?

A. General brokerage and commission business.

(Testimony of R. E. Small.)

Q. To what extent were they engaged in marketing Alaska canned salmon in the years 1912-1913?

A. To a very large extent.

Q. Give us an idea of the volume of the business, the proportion of the Alaska salmon that they handled, in cases? A. In dollars and cents?

Q. In cases.

A. Approximately eight hundred to nine hundred thousand cases.

Q. Were you personally acquainted with the market price of Alaska salmon in January, 1913?

A. Yes, sir.

Q. What was the market price of Alaska chums on January 10, 1913, per case?

Mr. BOGLE.—I object as incompetent and immaterial. There is no claim in here of loss of salmon or loss of market.

Mr. HANFORD.—We allege the value of the shipment, and that is all I want to prove.

Q. State the market price of chums. [113]

Mr. BOGLE.—I renew my objection.

A. 62½ cents a dozen.

Q. That would be how much per case?

A. That would be \$2.50 a case.

Q. The quality of the salmon generally—pinks, what was the price of that?

A. 65 cents a dozen or \$2.60 a case.

Q. And the price of medium reds?

A. \$1.15 a dozen or \$4.60 per case.

Q. Did Kelley-Clark Company have the marketing of from the Alaska Pacific Fisheries that were

(Testimony of R. E. Small.)

brought here on the steamer "Jeanie" in the month of January, that were reconditioned on account of damage? A. Yes, they did.

Q. Do you know the number of cases that were in that consignment?

A. Yes, I have my record with me. Approximately 10,498 cases of chums.

Q. (Mr. BOGLE.) What is that you are reading from?

A. From my own personal memorandum, off my own books.

Q. A memorandum made by yourself?

A. Not personally myself. Made by one of my clerks in the office there. —

Q. (Mr. HANFORD.) To get this in the record succinctly: That number of chums at \$2.50 per case would be of what gross value? A. \$26,245.

Q: Now the next quality, pinks, what was the quantity? A. 14,373 cases.

Q. Total value? [114] A. \$37,369.80.

Q. The total number of cases of medium red?

A. 4,786. Valuation, \$22,015.60.

Q. Was there any fluctuation in the market price of these goods between the 10th of January and the 20th of March, 1913? A. There was.

Q. Did the price go up or down? A. Down.

Q. On the 20th of March, what was the market price of chums? A. Approximately 55 cents.

Mr. BOGLE.—I want my objection to run to all this as incompetent and immaterial.

Mr. HANFORD.—It will be so considered.

(Testimony of R. E. Small.)

A. \$2.20 per case.

Q. Total valuation of the 10,498 cases?

A. \$23,095.60.

Q. Now, 14,373 cases of pinks?

A. No change; 65 cents a dozen or \$2.60 a case.

Value \$37,369.80.

Q. Now, the medium reds?

A. Ninety cents a dozen; \$3.00 per case. Value, \$17,229.60. Do you want to know the total value?

Q. Yes, you might state it.

A. That total amounts to \$77,695. I did not give the total in the first instance, that was \$85,630.40.

Q. And the difference? A. \$7,935.40.

Mr. BOGLE.—I want to renew my objection to all this testimony on the ground that there is no allegation in the libel [115] that there was any loss or market or loss of market price by reason of any damage and by reason of delay caused by the reconditioning.

Q. Were these salmon that you have referred to, after being reconditioned, in a marketable condition, so as to bring the market price?

A. Yes, sir; to the best of my knowledge and belief.

Q. Did the firm of Kelley-Clark company have the marketing of their canned salmon of that same season's pack, that came subsequently to this consignment on the "Jeanie"?

A. Did we represent other people?

Q. Did you handle their goods that came from the same canneries afterwards?

(Testimony of R. E. Small.)

A. Afterwards, yes, sir.

Q. Do you know just when?

A. Well, all through the season; I should say, safely, all through the marketing season; all through the year, you might say.

Q. Well, you have knowledge that they came from these canneries subsequently to the consignment that came on the "Jeanie"?

A. Yes, sir; I have such a record of them.

Q. What was their condition as to being marketable on their arrival here?

Mr. BOGLE.—I object as incompetent and immaterial and no bearing on the condition of this salmon.

A. Absolutely, they were on good marketable condition.

Mr. BOGLE.—I further object, unless the witness knows from what cannery shopped and grade of salmon and inspected on arrival. In other words, that he is testifying from his [116] own knowledge.

Cross-examination.

Q. (Mr. BOGLE) Mr. Small, what is your official position with Kelley-Clark company?

A. Manager of the salmon end of the business.

Q. Do you have personal charge of the sale of all salmon? A. I do.

Q. What was the opening market price of chums for the pack of 1912? A. 62½ cents.

Q. That was the opening market price?

A. Yes, sir; that was the opening market price.

Q. How is the opening market price arrived at, Mr. Small?

(Testimony of R. E. Small.)

A. Why, it is generally arrived at in this way: We are all of us governed more or less by the price making of the largest concern in the business, the Alaska Packers Association, and we have to listen to what they decide, and they usually wait until the result of the pack is determined pretty thoroughly all along the line. And then the market conditions are well considered. They are always ready to listen to anybody having an opinion, but they finally make the prices, and we simply have to guarantee against them. That is about the condition of affairs, as far as market making is concerned; but sometimes there is a variation in ideas.

Q. That opening market price is an arbitrary figure? A. It is a fixed custom, is all.

Q. And are the brokers and other packers notified by the Alaska Packers Association of the opening market price? [117]

A. Well, they publish it and we obtain it almost simultaneously. Sometimes it is sent out a day or so before we know it, but not often.

Q. Have you a record showing the market price as set for the 1912 pack?

A. Have I any record showing it?

Q. Have you any record showing it, in your office?

A. Well, yes, we issue immediately a circular in connection with it, if that is what you mean.

Q. Yes. A. Yes, sir.

Q. Have you that circular with you?

A. No, sir; I have not.

Q. That circular is issued under your name, is it?

(Testimony of R. E. Small.)

A. Yes, they are our prices.

Q. That is the prices that you endeavor to obtain for the pack of the season of 1912? A. Yes, sir.

Q. Did you refer to that circular lately, Mr. Small, so that you are sure of the price on chums?

A. I did not refer to it at all, Mr. Bogle.

Q. Just merely from recollection?

A. From recollection.

Q. When is that price fixed, what season of the year?

A. Right after the packing season is over, or nearly completed, say the latter part of August.

Q. And when is the large portion of the pack moved from Alaska, Mr. Small?

A. During the fall following.

Q. And which are the busiest months for moving the pack? [118]

A. September, October, November and December.

Q. And after December, is it or is it not, as a rule, more difficult to move a pack at the opening market price?

A. More difficult? Of course that is subject to qualifications, Mr. Bogle. There might be certain conditions where that statement would be absolutely incorrect.

Q. Well, as a general rule, Mr. Small, is it not a fact that the months of January, February and March are the dull months for moving salmon?

A. Yes, you are perfectly correct in that statement, generally speaking.

Q. And that the best market for salmon is during

(Testimony of R. E. Small.)

the fall and winter months, up until along the first or middle of December? A. Yes, that is correct.

Q. How did the prices of 1912 compare with the previous year, Mr. Small? A. Very much lower.

Q. What was the reason for that?

A. Owing to the fact that there were rather abnormal conditions in 1911. We had a combination of circumstances in 1911 that will probably scarcely ever be repeated. That is an almost bare market, and the buyers almost fixing the valuations themselves and fixing them very high. Naturally the spot market had crept up to such a point that it was fixed at a very high market, and it was a very high market when the whole pack was thrown on and it proved to be very disastrous all around. And consequently there was a great revulsion of feeling in 1912, and we had to make prices commensurate with the conditions as we found [119] them. In other words, we had to put them on a basis that would popularize the article.

Q. Was there any portion of the 1911 pack carried over, Mr. Small, any portion that you handled?

A. Scarcely any in first hands, Mr. Bogle. It is impossible to fix the amounts carried over in jobbers' hands, except by mere guesswork.

Q. As far as you are concerned?

A. As far as we were concerned we were comparatively closely sold out.

Q. The 1911— A. The 1911 pack.

Q. Had you sold any salmon for the Alaska Pacific Fisheries, any proportion of their 1912 pack, prior to

(Testimony of R. E. Small.)

this shipment on the "Jeanie"?

A. Yes, certainly.

Q. When did you sell the first of it, Mr. Small?

A. Well, that would be impossible to tell you without consulting my records. But if you know the custom of the business we can sell salmon very early in the year, subject to the approval of prices, or at the opening price, those two methods of selling. Now, I could not tell you when the sales were made. The Alaska Pacific received their proportion of the sales.

Q. Mr. Small you handle, as you have stated, a very large number of cases during a season?

A. Yes, sir.

Q. Do you, in your office, handle these cases separately, or do you handle each account separately, or are these accounts lumped in a way. In other words, if you have, say, [120] 15,000 of one grade of salmon for the Alaska Pacific and you have 85,000 cases of the same grade for other customers, now, in disposing of that salmon would you select outright any one lot, or would you sell in the proportion of that grade and apportion it among your customers?

A. Among our clients.

Q. Among your clients?

A. We aim, as far as possible, to keep a *pro rata* arrangement right through. But the element crops in from the fact that some of the packers have brands that are fairly well known and demand for their brands have to be respected from the general *pro rata* arrangement, if that will answer your question. At

(Testimony of R. E. Small.)

times we get specific orders for certain brands, either the Alaska Pacific or one of our other clients, and that has to be respected and that don't go into the general prorated distribution.

Q. When salmon is sent down from Alaska lacquered and labeled and ready for the market, the only way you can sell that then is on demand for that particular grade or brand, is it not?

A. We have a great many orders in which the arbitrary right of selection rests with us.

Q. Is it not customary, Mr. Small, to dispose of as much of your pack as possible in the fall and early winter months, as you say, subject to future delivery, subject to approval on arrival, subject to examination upon arrival?

A. We aim to as a rule, unless the market tendencies are upward, we endeavor as fast as possible to dispose of as much of the pack as possible during the fall of the year.

Q. You dispose of as much as the market will stand? [121]

A. Yes, sir.

Q. And then the fall and winter of 1912 and spring of 1913, what was the condition of the market? Did it have an upward tendency?

A. Dating from what time to what time?

Q. Well, from the time the opening market price was set in the latter part of August, up to January or February?

A. It was fairly firm; the market was fairly firm until after the first of the year. And then after the

(Testimony of R. E. Small.)

first of the year, drifting right down through the spring, it had a lower tendency in some of the commodities.

Q. How much salmon, of the grade known as chums, did you dispose of during the month of January, 1913?

A. I can hardly answer that question, but I should venture to say very little.

Q. How many of the grade of salmon known as pinks did you dispose of during January?

A. Very few.

Q. And of the medium reds? A. Very few.

Q. How about the month of February, 1913?

A. Business was also light.

Q. I suppose very few consignments of any of these grades? A. Yes, sir.

Q. And March?

A. A little more increase of business, as the market went down and met the ideas of the jobbers, as spring progressed, the business increased.

Q. Did you dispose of any salmon for the Alaska Pacific Fisheries during the month of January, 1913? [122] A. I cannot answer that.

Q. I wish you would find that out, Mr. Small. You can, by an examination of your books, can you not? A. Oh, yes.

Q. Could you answer the question as to whether or not you disposed of any salmon for that company in February? A. I did not ascertain that.

Q. Or in the month of March?

A. I did not ascertain any specific figure at all.

(Testimony of R. E. Small.)

Q. I wish to obtain that information, Mr. Small, When did you dispose of a large portion of the pack of the Alaska Pacific Fisheries, the 1912 pack?

A. They were disposed of all through the season of 1913, the year 1913, up to the new pack of 1913. Disposed of a great deal during the spring and summer.

Q. Do you know how many cases you had on hand, or subject to your orders, belonging to the Alaska Pacific Fisheries on March 21, 1913?

A. No, sir; I do not know.

Q. Is it customary for the Alaska Pacific Fisheries to notify you when their pack is put up, the number of cases they have on hand for sale?

A. After the pack is completed?

Q. Yes, sir. A. Certainly.

Q. And then you dispose of them as rapidly as possible, taking into consideration the market and the prices to be obtained? A. Yes, sir.

Q. Could you tell me whether or not you disposed of any of [123] their pack prior to January 8th, 1913? A. I did.

Q. Could you tell how many cases you disposed of?

A. I cannot know without consulting my books.

Q. I wish you would also obtain that information for me, Mr. Small. You had nothing to do with reconditioning or overhauling this "Jeanie" shipment, did you? A. No, sir; not a thing.

Q. Had you sold that shipment prior to the arrival of the "Jeanie"? A. No, sir.

(Testimony of R. E. Small.)

Q. When did you succeed in selling that consignment?

A. I cannot answer that without consulting my notes.

Q. I wish you would consult your books on that point. When did you call upon the Alasoka Pacific Fisheries for a delivery of this "Jeanie" consignment?

A. I do not think I made any definite call beyond expressing an opinion that a certain amount better be shipped down. That is all that would be customary. I do not think I made any specifications at all for a definite cargo.

Q. Do you remember now, what this shipment sold for, the price it sold for?

A. No. That would be impossible to tell without consulting each individual sale, and the market in the spring was more or less erratic.

Q. Is it not customary, Mr. Small, to give a discount in sales of salmon during the dull season?

A. It is not customary for us to do so.

Q. Did you discount any sales of salmon on this grade during the early part of 1913? [124]

A. You refer to interest discounts, favored customers, is that your question?

Q. No. It is usual, is it not, to sell salmon one and a half off for cash?

A. That is simply part of the price; that it never even mentioned.

Q. It is the customary price? A. Yes.

Q. Then there is another five per cent which goes

(Testimony of R. E. Small.)

to the broker? A. Yes, sir.

Q. Now, outside of the discount of five per cent and the one and a half per cent, is it customary, in order to dispose of a pack, or portion of a pack, during the dull season, to further discount from the market price, the opening market price?

A. Our custom is to make a price; we do not give any inside discount at all. We sometimes may make a price, that is what we consider consistent with the market conditions.

Q. Well, that price is not necessarily the opening price? A. Oh no, no.

Q. That is what I am getting at. After you make your price then it is customary for you to discount the opening market price during the dull period if you want to move the salmon?

A. That might prevail during a dull period, say in an extreme condition like existed in the spring of 1913; we have scarcely had such a down market for many years.

Q. Over what period did that down market extend?

A. Practically extended from January steadily right down to [125] midsummer.

Q. Was there any variation in the price from January until the middle of March?

A. Yes, decided drop in all of the grades—in two of the grades mentioned in this controversy.

Q. What grades?

A. Chums and medium reds.

Q. There was a decline of how much in the price of

(Testimony of R. E. Small.)

chums from January 8th to March 21st?

A. Seven and a half cents a dozen, thirty cents a case.

Q. And when did that decline take place?

A. Well, the first evidence of it that I noticed in my records, was in February, 57½ and then dropped to 55.

Q. About what time in February?

A. Oh say the 10th or 15th.

Q. Did you have a sale or was there any market for this salmon at the time it arrived January 8th, 1913, at the opening market price?

A. Very little business at that time.

Q. Could you have disposed of this pack, consistently with the custom of your office handling all of your customers at that time?

A. You mean this entire block?

Q. Yes, sir.

A. No, sir. I could not.

Q. As I understand it then, Mr. Small, while the opening market price obtained up until some time the first of February, at the same time it was a very dull market and very little moving. [126]

A. It is the customary condition of affairs at that time of year.

Q. It was very much so during the early months of 1913, is that true?

A. Well, I would not say that it was any more than the usual state of affairs.

Q. Did not the *Alaska Pacific Fishers* ship any more salmon down from Alaska prior to the 15th of

(Testimony of R. E. Small.)

February? A. You mean the January shipment?

Q. From their canneries, did they subsequently ship any salmon?

A. Subsequent or prior to this "Jeanie" shipment?

Q. Subsequent to this "Jeanie" shipment.

A. Yes, they shipped salmon subsequent to the "Jeanie" shipment.

Q. What time?

A. My recollection is all through the spring we had shipments.

Q. Did you have any along in the middle of January?

A. No, I think that was the only shipment in January that we had, if my recollection serves me correctly.

Q. Look up your records on that.

A. I have my records on that; I failed to bring them along with me.

Q. At the time of the arrival of this "Jeanie" shipment, did the Alaska Pacific have any salmon here on hand ready for shipment?

A. That I could not answer offhand; I did not ascertain that.

Q. Could you tell from your records?

A. Oh, yes, I could tell from my records.

Q. Look up your record on that, too. Is it customary, Mr. [127] Small, to sell salmon for immediate delivery? Is it not the custom in most shipments to sell for future deliver?

A. Well, if you mean to fix the percentage, the per-

(Testimony of R. E. Small.)

centage of any one pack that is sold for spot shipment as it were, as distinguished from the future sales as we term it, I should venture to say that would be pretty hard to deal with, except in a specific year, because we sell a great deal of salmon for spot shipment, that is for immediate shipment.

Q. Is it not a fact that most of the sales are for future delivery?

A. Most of our sales, the bulk of our sales are sold prior to packing, or at the time of the pack, for shipment during the fall season, that is the bulk of the business.

Q. I understand, however, that you had not sold this particular consignment at the time of the arrival?

A. I cannot tell now, and possibly I could not even tell from our records whether I was dependent upon some of these for sales that were on the books ready for shipment. I do not know that I could even tell that, unless I could remember the instances surrounding it. It might have been that I was dependent upon this thing and when it came in I was prevented from using it.

Q. There is a decided advantage—

A. —Rarely have complete shipments in December for the fall. I will say to you that oftentimes January appears like a very good month with us, because we are unable to get all our shipments off during the fall of the year.

Q. But these are shipments previously sold and for future delivery? [128] A. Yes.

(Testimony of R. E. Small.)

Q. In case of sales for future delivery, the packer has to carry the pack?

A. That is until the time of shipment.

Q. That amounts to some two or three per cent per month for carrying the pack? A. Yes, sir.

Q. Mr. Small, did you make any request of the Alaska Pacific Fisheries to deliver this "Jeanie" shipment to you at any time during the month of January, February, up to the middle of March? Tell them that you had a sale for it and desired to ship it?

A. Just drawing on my recollection, Mr. Boble—

Q. Not as a matter of record in your office?

A. Even if I had my records I would have to draw on my recollection any way, and my recollection was that I could have used some of this salmon and I needed it. That is merely my recollection. I cannot tell whether I am truthful in making that statement or not. I would have to refresh my memory by consulting the stocks at that time and the sales that had not been filled, and then it would be a question of judgment.

Q. You could not tell, and you do not recollect now, whether or not you could have handled any portion of this shipment in January, February or up to the middle of March, or what proportion of it you could have handled?

A. I could not tell accurately that, no, or truthfully without studying my records.

Q. Could you tell now, Mr. Small, whether or not you could [129] have handled any of it. Do you

(Testimony of R. E. Small.)

state that you could have handled any of it?

A. I would not undertake to answer that without studying the condition of affairs.

Q. In giving the figures as to the price of this grade of salmon in the month of March, 1913, I take it that you are using your records of the average price which obtained for this grade of salmon at that time?

A. Yes, I was governed by the actual condition.

Q. Not from the price which you obtained for this salmon?

A. I was governed by actual sales that I found on my books at that time.

A. Not of this particular salmon?

A. Not of this particular salmon.

Q. I think I asked you whether you remembered when this salmon was sold?

A. I cannot tell you that.

Q. Whether sold for immediate or future delivery?

A. You mean whether I had orders awaiting the arrival of that salmon, is that what you mean?

Q. Not in this particular question. I want to get the specific fact as to when you sold this salmon, and also want to know whether you subsequently sold it. A. Yes.

Q. For immediate or future delivery?

A. Well, if we sold it after that time the chances are there was no sale of it for future delivery at all; it was a question of spot shipment.

Q. After what?

A. Any time after the first of January we are not

(Testimony of R. E. Small.)

selling— [130] we might possibly extend the future delivery thirty days or something of that sort. An order might come in for shipment next month, but we would not take any business there for shipment say 60 or 90 days or 120 days ahead. I do not remember that we did any such thing as that; it is not customary, after the pack is closed the market resolves itself pretty closely into immediate shipment.

Q. Do you know, Mr. Small, whether or not any of this pack was left over and carried over until the next season? A. Into the 1913 pack?

Q. Yes.

A. I could not answer that question definitely.

Q. Could you obtain that information from your books?

A. Yes, I could obtain that information from our books.

Mr. BOGLE.—I would like to get this definite information, Mr. Small, about this particular pack. We can go ahead with Mr. Burckhardt while Mr. Small is getting it.

Mr. HANFORD.—I will object to the testimony on the ground that it is not proper cross-examination as being germain to the inquiries that were made in the examination in chief, and if you want it you can have Mr. Small for your witness.

Mr. BOGLE.—You opened the line of inquiry as to the market price. I do not think it is material.

Mr. HANFORD.—Our position, Mr. Bogle, will be that the measure of damages is to be ascertained by

(Testimony of R. E. Small.)

reference to the market fluctuations; the actual sales or loss of profits by not making sales we are not claiming here. The general measure of damages, the depreciation in [131] value during the period of detention, that is what we will contend for.

Mr BOGLE.—I do not think you have made such an allegation. You allege that you lost interest during the time it was being reconditioned, not that you lost the market or that the market price dropped. And having gone into that, I think it is material to see whether or not the market price dropped any, or dropped so as to affect this particular shipment. The general fact that the market price dropped, without any information here or testimony that this libelant suffered by that drop in the market price, would not be material. Specific damages are claimed, and I think it is material to have Mr. Small get this for me.

Mr. HANFORD.—Mr. Small, you can ascertain as near as you can, the information Mr. Bogle wants, and if he wants to examine you about it he can do so. He has a right to do so over our objection. I simply want my objection noted that it is objected to as not being cross-examination.

(Witness excused.) [132]

[Testimony of Charles A. Burckhardt, for Libelant.]

CHARLES A. BURCKHARDT, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HANFORD.) State your full name?

A. Charles A. Burckhardt.

(Testimony of Charles A. Burckhardt.)

Q. What is your relationship to the Alaska Pacific Fisheries? A. President and manager.

Q. Were you occupying that position during the packing season of 1912? A. Yes, sir.

Q. What part did you personally have in the packing of the product for 1912?

A. The Yes Bay pack.

Q. Were you there personally? A. Yes, sir.

Q. Were there salmon that came on the "Jeanie" from that season's pack at Yes Bay? A. Yes, sir.

Q. State what the condition of the goods were as being completely prepared for market and in what condition, at the cannery?

A. They were in first-class condition in every respect, both as to contents and package.

Q. Give us a description, in a general way, of that cannery. How it is situated with reference to access by vessels coming and bringing fish there and taking the product away?

A. Yes Bay is located about 40 miles northeast of Ketchikan, at the head of Bean canal. We have a good wharf and good warehouse facilities; the salmon was all under [133] cover, protected from all kinds of weather.

Q. How about its being clean or subject to soiling the cases by dirt or coal-dust or anything of that kind?

A. No dirt, it was impossible for anything of that kind to happen.

Q. In moving the goods from the warehouse to be

(Testimony of Charles A. Burekhardt.)

loaded in a ship, what distance would they have to be moved?

A. The width of the dock is about thirty feet and the trucking from the warehouse to the slings and on to the vessel would be that distance.

Q. What is the extent of the salmon-packing business carried on by the Alaska Pacific Fisheries, what canneries do they have and where are they situated?

A. We have three canneries. One located at Yes Bay; one located at Chomly Sound, Prince of Wales Island, and one at Chilkoot inlet, near Haines.

Q. What is the fact as to all of the salmon that came on the "Jeanie" being of the pack of 1912, or any leftovers from previous years?

A. It was all 1912 pack.

Q. Do you know how many cases altogether came on the "Jeanie" of the different kinds?

A. 29,657 cases.

Q. Were you in Seattle when the "Jeanie" arrived? A. I arrived the following morning.

Q. You were here the day after she arrived?

A. Yes, sir. Just one moment, I think she arrived during the night, or late that afternoon and I was here the next morning.

Q. Were you here during the time the goods were being [134] discharged from the ship?

A. Yes.

Q. State, if you know, whether the freight for the carriage of the goods on the "Jeanie" was paid.

A. Yes, sir.

Q. Did you see the goods after they were dis-

(Testimony of Charles A. Burckhardt.)

charged, or as they were being discharged?

A. I saw them while they were being discharged and after they were discharged.

Q. What did you observe in regard to the condition of the goods?

A. I went down to the dock while the "Jeanie" was discharging, with Mr. Roberts.

Q. Now, before speaking of the salmon cases, state what, if anything, you observed about the appearance of the ship and the condition of the decks.

A. The ship was very dirty. There was coal scattered over the ship. The hatches of the ship were both open. They were not working the ship at the time; it was pouring down rain. The aft hatch sling had broken and there was a whole sling of salmon cans scattered all over the aft hold. The forward hatch cases were black with coal-dust, and men had been tramping down around them and tracked it all over the whole place. The tarpaulins were lying off to one side. I went and examined the tarpaulins and they were absolutely rotten. Also, the cases were standing out, piled up on the edge of the dock without any cover.

Mr. BOGLE.—I object to the testimony and ask that it be stricken, as there is no allegation in the libel that [135] the cargo was damaged by reason of the method in which it was unloaded in Seattle. The allegation of damages is that it all occurred on the voyage from Alaska to Seattle.

Mr. HANFORD.—We are not claiming any special damage by rain during the discharging opera-

(Testimony of Charles A. Burekhardt.)

tion, but it is part of the *res gestae*. We have got to show what Mr. Burekhardt observed there at that time.

Q. Go on and state the appearance of the cases; all that you observed during the time of discharging and reconditioning the goods, as to the condition of the cases, cans, and labels, all about it.

A. The salmon came out of the ship and they were transferring it over to the brick warehouse with an elevator, and the ship people had a man there, and we also sent a man up there to try to pull out the wet and dirty cases and we pulled out a great many of them; some of them got by and went over. And the cases, I forget how many thousand cases, were on the dock, the worst of them were standing on the dock, sides out, mashed up cans, mashed up and dirty labels, labels covered and cans covered with coal-dust and some with rust. I went over and examined the cases at the warehouse. Some of the cases that were apparently clean and were entirely clean on the outside, on opening them up we found them filled with coal-dust.

Q. (Mr. BOGLE.) You observed this all yourself, did you, Mr. Burekhardt?

A. Yes. And you could not tell from the outward appearance of the package as to the contents on the inside, on [136] account of this coal-dust that had scattered through there and soiled the labels and dirtied the cans and dirtied the insides of the boxes.

Q. (Mr. HANFORD.) State what, if anything,

(Testimony of Charles A. Burckhardt.)

occured with reference to action to remedy this damage?

A. After this cargo had been discharged my brother and I went up to the dock and we met this gentleman, Mr. West, there that morning, and he told me he was representing the insurance people, and Mr. Hall, the manager of the dock, and a Mr. Dawson, representing the ship, and Mr. Horner was there. We looked these cases over at that time on the dock, and they were in very bad shape, and I told them that they would have to get action on them pretty quick or the rust would cause more damage. And Mr. West asked me if I was satisfied with Mr. Horner to overhaul that cargo, and I told him that all we wanted was that they put the cargo in as good condition as they received it, and Mr. Horner, as Mr. Horner was going to do the work, he would be acceptable to us, and we left then, thinking the matter had been entirely adjusted, that the insurance people were going to recondition this cargo and put it in the same condition as they received it at the cannery.

Mr. BOGLE.—I object, let the witness state what happened.

Mr. HANFORD.—That is what he is stating.

Mr. BOGLE.—He is stating conclusions. Let him state what took place between the different parties.

Mr. HANFORD.—That is what we want.

Q. Now, following the history of the matter, state what [137] was done to recondition and overhaul

(Testimony of Charles A. Burckhardt.)
and inspect the salmon?

A. The salmon was reconditioned by Mr. Horner. I went up there quite often to see how the work was progressing, and after it was all finished, or before it was finished, he asked us for a little advance on the thing, he said he was getting in the hole on the thing and would not get his money from the insurance company until he finished the cargo and he wanted some money—

Mr. BOGLE.—I object as incompetent, immaterial and hearsay.

Mr. HANFORD.—It is not material as to your conversation with Mr. Horner.

A. (Continuing.) Finally, Mr. Horner had completed his work and came to me and stated that the insurance people would not pay the bill—

Mr. BOGLE.—I object to any conversation between the witness and Mr. Horner, as not material in this case and it is hearsay.

A. (Continuing.) Mr. Foreman of the insurance company came up at that time in my office and refused to pay the bill, and we had to pay the bill.

Q. Did you pay it? A. Yes, sir.

Q. How much, the amount shown on the bill?

A. Yes, the full amount.

Q. Before the work was done, in the condition in which the cargo was discharged, could that have been marketed? A. No, sir.

Q. Is there any reason that satisfied you as a business man, why it was necessary to do all the work that [138] Mr. Horner has charged for, including

(Testimony of Charles A. Burckhardt.)

the handling of all the cans in all the cases?

A. It could not have been done any other way.

Q. That was absolutely necessary to put it in condition?

A. If we had shipped that salmon out to any customer and he had received the salmon with the dirty labels and dirty cans from this coal-dust, we would have had rejections on our goods, and had the goods scattered all over the country.

Q. At any time did you have any conversation with anyone except Mr. Dawson representing the ship, in regard to this matter?

A. With Mr. Swan.

Q. Who is Mr. Swan?

A. Mr. Swan was the manager of this company.

Q. Can you fix any time that you had any conference with him about the business?

A. It was during the time that this work was in progress.

Q. How soon after the arrival of the ship?

A. I think immediately.

Q. Was the matter mentioned or talked of between you and Swan in any way as to the extent of the damage or the nature of the damage or the cause of it?

A. Yes, Mr. Swan—I told Mr. Swan that the entire cargo would have to be overhauled.

Q. Have you in your possession or under your control any of the bills of lading or copies of them, that were issued for this shipment?

A. They were delivered to the warehouse people

(Testimony of Charles A. Burckhardt.)

as soon as the goods arrived. [139]

Q. If this salmon had arrived in an undamaged condition, what would have been the market value here in Seattle the date of arrival, or say January 8 or 10 or 11?

Mr. BOGLE.—I object unless the witness can show that they had a sale for it, otherwise the market price is not material, as there is no claim for the market price of the salmon, merely for damage to the salmon and cost of reconditioning and deterioration of the goods.

Mr. HANFORD.—I have to prove this in order to show we are damaged by delay.

Q. The gross amount?

Mr. BOGLE.—I object. The only allegation you make is damage by delay, is loss of interest during the period you were delayed in marketing the salmon.

Mr. HANFORD.—I want to show the computation of interest, show how much it amounts to.

A. \$85,630.40.

Q. (Mr. BOGLE.) What are you reading from?

A. A statement that I prepared.

Mr. BOGLE.—I object unless he can show he has some knowledge of the market value of these salmon and what he is basing it on.

Q. (Mr. HANFORD.) Were you keeping track and observing the price of salmon during that time? A. Yes, sir.

Q. Have you made a computation of the interest on that valuation up to the 20th of March?

(Testimony of Charles A. Burckhardt.)

A. \$985.60.

Q. At what rate did you make that computation?

A. At six per cent. [140]

Q. What, if any, change, any depreciation or market value occurred between the 8th of January and the 20th of March?

Mr. BOGLE.—I object as immaterial.

A. The market price of the salmon on March 20th was \$77,695.00.

Q. (Mr. BOGLE.) You are still reading from that statement?

A. Yes, a difference of \$7,935.40.

Q. (Mr. HANFORD.) State what you know about the condition of the market during January and February and March, as to it being active or dull or what it was?

A. We moved quite a good deal of salmon during January and February and March, but I haven't any figures with me to say just exactly the amount that we did move.

Q. Do you recollect any particular sales that were made shipment to Manila or elsewhere?

A. Yes, we made some shipments to Manila—some large shipments, but I do not recollect exactly the number of cases at this time.

Q. Well, during what periods or what months did that occur? A. During January and February.

Q. That did not include any of these goods?

A. No, sir.

Q. What was the condition of other shipments that were made from your canneries in Alaska of

(Testimony of Charles A. Burckhardt.)

the 1912 pack before and after the goods that came on the "Jeanie," as to their being damaged or undamaged.

Mr. BOGLE.—I object as incompetent and immaterial.

Mr. HANFORD.—We claim that it is material to show that the goods coming out of these canneries were in good condition except those that came on the "Jeanie." [141]

A. We had no trouble except this one shipment.

Q. Has this salmon that came on the "Jeanie" been disposed of, all of it? A. Yes, sir.

Q. What is the fact as to canned salmon, packed in cases as this was, being subject to deterioration from any inherent defect during water transportation? A. I do not get that question.

Q. Well, some goods carried in the hold of a ship will be damaged by sweating, and tin cans may rust under conditions of that kind. I want to know, when canned salmon are put up as these were, what could have caused the damage that was found in them, as being anything to which the goods themselves were subject by inherent conditions?

A. There could not anything any damage occur to these packages excepting through the water getting on to the cans, and this coal-dust and dirt getting into them. We ship our cans around the Horn by water—

Mr. BOGLE.—I object as immaterial.

Q. Continue about the fact as to their being capable of being transported on long voyages.

(Testimony of Charles A. Burckhardt.)

A. We ship thousands of cases all over the globe, Africa, South America, Manila, Singapore, around the Horn to the Atlantic coast, and we never had any trouble, never had a claim on that account.

Q. (Mr. BOGLE.) On what account?

A. Damaged goods.

Q. (Mr. HANFORD.) Besides Mr. Horner's bill for reconditioning, were there any other expenses incidental [142] to the reconditioning of the goods?

Mr. BOGLE.—I object, there is no allegations in the libel as to any other damage or any other bills.

A. Yes, sir.

Q. State what they were.

A. The storage for the above period, from January 10th to March 20th, amounting to \$778.47, that is at the rate of 25 cents for 2,000 pounds. The cases are 70 pounds and made a total of 2,075,990 pounds.

Q. Was there any other item of expense?

A. Insurance.

Mr. BOGLE.—I object to that, there is no allegation covering any further damage.

A. For the same period at \$.93 per hundred per annum, amounting to \$150.54.

Q. Is there any other fact that you think of that you want to state in this connection?

A. I do not think so.

Cross-examination.

Q. (Mr. BOGLE.) Mr. Burckhardt, you say that all the "Jeanie" salmon has been disposed of?

A. Yes, sir.

(Testimony of Charles A. Burckhardt.)

Q. Do you know when the last of that salmon was disposed of? A. No, I do not.

Q. Could you give us the approximate date?

A. No, I could not.

Q. Was it disposed of during the year 1913?

A. Yes, sir. [143]

Q. Was it disposed of prior to July, 1913?

A. I could not say. I think it was. I could not be positive. It was all sold about that time, but I could not say as to delivery, whether it all moved out or not.

Q. Was it all moved before September, 1913?

A. Well, I would think so. I could not answer that positive unless I went through my records. We do not keep any special records of our shipments. I would have to get that from Kelley-Clark.

Q. You have received returns from all of the salmon, have you?

A. Yes, we got our returns as to the year's pack, not as to cargo.

Q. Have you had any claims against the salmon? Was it all in good condition when delivered?

A. Well, we had no unusual claims, no more than we generally get; some small swelled claims, runs about the same as on any packs.

Q. Was it all in salable and marketable condition after it was overhauled by Horner, after he finished with it? A. We were satisfied it was.

Q. Then Mr. Burckhardt, the allegation of the libel that by reason of irremediable damage thereto by reason of dust on the cans of two thousand cases,

(Testimony of Charles A. Burekhardt.)

the libelant has been unable to sell and dispose of the same, whereby libelant sustained a loss of \$4,500 is incorrect—the 12th allegation of the libel?

A. How many cases?

Q. Two thousand cases which were in an unsalable condition and you have been unable to sell or dispose of [144] the salmon and sustained a loss thereby of \$4,500, is that or is it not a correct statement? A. I think it is a correct statement.

Q. You just stated that you sold it all?

A. Yes.

Q. Did you sustain a loss of \$4,500? A. No.

Q. It is not correct then. Has this salmon depreciated any after being overhauled and reconditioned? A. No, sir.

Q. The tenth allegation of the libel states that the said merchandise after being so overhauled and reconditioned depreciated in value \$2500, that is not correct? A. No, sir.

Q. Do you know when this particular salmon was marketed, Mr. Burekhardt?

A. It was marketed during the spring and summer of 1913. I cannot give you the exact dates.

Q. Mr. John A. Burekhardt is your brother, is he?

A. No; he is vice-president of the company.

Q. He is your brother?

A. No, my name is Burekhardt and his name is Burgard.

Q. He is vice-president of the company?

A. He was at that time.

Q. Mr. Burekhardt, you were aboard the "Jeanie"

(Testimony of Charles A. Burckhardt.)

on the morning after she arrived?

A. Yes, the morning they were discharging.

Q. They were discharging when you arrived at the ship? A. No, they were not.

Q. Had they discharged any cargo up to that time?

[145] A. They had discharged some cargo.

Q. From what hatches had they discharged cargo?

A. They were discharging from both hatches, the forward hatch and the middle hatch.

Q. That is the main hatch forward, hatch amidships?

A. No, the aft hatch, the hatch amidships and the aft hatch.

Q. Did you examine the cargo in the hold at that time, the hatches were open, were they not?

A. Yes, sir.

Q. What was the condition of the cargo in the forward hatch?

A. I did not go to the forward hatch.

Q. The main hatch forward?

A. The main hatch cases were all dirty.

Q. You did go to that hatch?

A. Yes, that is the big hatch.

Q. You inspected the cargo as it lay in the hold of the ship? A. Yes, sir.

Q. How much had been taken out at that time?

A. Oh, that would be pretty hard to say.

Q. Oh, just roughly, any appreciable amount or just a few hundred cases?

A. Several thousand cases, I would say.

Q. Had been taken out at that time?

(Testimony of Charles A. Burckhardt.)

A. Yes, sir.

Q. And these cases were in what condition, were they wet? A. Dirty and wet.

Q. Were they all wet? [146]

A. No, not all of them.

Q. Well, were all the damaged cases from that hatch in a wet condition? A. No.

Q. What was the cause of the damage, apparent cause of the damage to the other cases?

A. As I looked down that hatch, the cases that were along the sides of the ship were the dirtiest ones, excepting those that were immediately under the hatch.

Q. Those along the sides, next to the skin of the ship? A. Yes, sir.

Q. Were they wet also?

A. Yes, wet and dirty; they were very wet.

Q. All of these salmon were in the between decks or deck immediately underneath the hatch. You did not inspect any salmon that was in the hold of the ship?

A. Well, they had taken some salmon out of the aft hatch I could not say how much; they had broken a hole into it there and it was wet.

Q. It was also wet, was it?

A. It was wet but it was not dirty like the other salmon in the forward part of the vessel; there had been a sling load of salmon broken and scattered all over the after hatch.

Q. What I want to get at, is the nature of the damage; was all the damage to the cargo in the after

(Testimony of Charles A. Burckhardt.)

hatch water damage?

A. Well, I could not say as to that.

Q. Did it appear to be dirty?

A. It was dirty, but not near as dirty as the other part. [147]

Q. Did you see evidence of coal-dust damage there?

A. Well, it was black and dirty; I could not say whether it was coal-dust or not.

Q. Could you say whether or not it was coal-dust damage forward? A. Yes, sir.

Q. That you could tell from the forward hatch.

A. They were down deeper in the other hold, in the aft hatch.

Q. From the cases that you could see in the after hatch, could you tell whether there was coal-dust damage or not?

A. I would say yes, I thought there was some coal-dust even in there, but it did not appear to be as wet a condition as the other part of the cargo.

Q. Now, was this cargo in the after hatch, was all the damage immediately under the hatch or any damage near the skin of the ship?

A. I could not say as to that. The after hatch is very small. It is a very small hatch there.

Q. Now, that was the extent of the examination you made the first day you went down there?

A. Well, I examined the tarpaulins the first thing.

Q. How did you happen to do that?

A. We were advised that the tarpaulins were rotten, in bad shape.

(Testimony of Charles A. Burckhardt.)

Q. You had been advised that? A. Yes, sir.

Q. Prior to this first visit? A. Yes, sir.

Q. What tarpaulins did you examine and where were they? [148]

A. They were lying right alongside the hatch.

A. The after hatch?

A. The forward hatch and the after hatch both.

Q. We will take one hatch at a time. How many tarpaulins did you examine alongside the after hatch?

A. Well, there was a bundle lying there, piled right there.

Q. Could you tell how many there were?

A. No.

Q. What was the extent of your examination?

A. I took hold of it and tore it, it was rotten.

Q. That was all you could tell about that, that it was rotten and tore?

A. It was not a proper kind of covering to put over a hatch. It would not keep the water out.

Q. How did you know that it had been over that hatch? Because it was lying there?

A. Yes, sir.

Q. Do you know whether or not there were any other tarpaulins over that hatch? A. No.

Q. The only thing you noticed about the tarpaulins was that they were rotten and were thrown there? A. There were no other tarpaulins there.

Q. You did not see any other? A. No.

Q. Now, did you notice the tarpaulins at the forward hatch? A. Yes, sir.

(Testimony of Charles A. Burckhardt.)

Q. Were they in the same condition?

A. Yes, sir.

Q. How many tarpaulins were there at the forward hatch. [149]

A. I did not examine. I just saw them lying there and took a look at them.

Q. Did you tear one of these?

A. Yes, there was a hole in that forward one and I put my finger in the rip and pulled it right down.

Q. That was the extent of your examination, was it? A. Yes, sir.

Q. How were these hatches constructed, Mr. Burckhardt? A. How are they constructed?

Q. How are they secured and fastened?

A. They had planks across first and then covered with these tarpaulins.

Q. Planks across the face of the hatch?

A. I was not there when they were battered down.

Q. They are the ordinary construction of hatches?

A. Yes, sir.

Q. Did you notice the discharge of that cargo as it came out of the ship at a subsequent date?

A. Yes.

Q. Where did the most of the damaged cargo come from, what hatch or what hold, what deck, rather?

A. I could not say as to that.

Q. Could you tell from what hatch most of the damaged cargo came from?

A. Well, from what I saw, it was that amidship hatch, when I was there.

Q. The main hatch is forward of the pilot house is

(Testimony of Charles A. Burckhardt.)

it not? A. Yes, sir.

Q. You made no further examination of the cargo of the ship after that, did you? [150]

A. No, sir.

Q. Was all of this damage to the salmon caused by the leaking of the water, the water getting into the cases?

A. The main damage was done by the fact that this coal-dust had worked through these cases, and there was no possible way of detecting this thing until you opened up the cases. The wet cases and the dirty cases, you could pile these aside, but the other cases that were dry, the cases that were clean and apparently absolutely clean on the outside, and were filled with this coal-dust, that is what necessitated the overhauling of this entire cargo. If it had not been for this coal-dust, it would not have been necessary to have opened all these cases.

Q. That is not what I ask you, Mr. Burckhardt. I am asking if the water did not cause the major portion of the damage to this cargo.

A. Well, I would think not; I think it was coal-dust.

Q. Well, what damage did the coal-dust cause to the cargo?

A. It necessitated the overhauling of this cargo.

Q. Was that the main damage?

A. The cleaning of these cans and getting the dirt off and making new cases. If the cases had been clean everything clean in the hold of the ship, with clean water on there, it would not have caused any such damage.

(Testimony of Charles A. Burckhardt.)

Q. How about the clean salt water, would not that have caused any damage?

A. Well, it would have caused some damage, yes.

Q. Does not salt water cause the cans, unless you recondition [151] them and wipe them off, does not that cause a certain amount of rust and eat into the cans and cause to spring or open up?

A. There is some danger of that. It in fact eats any tin even if it is lacquered. But we have had the tide come up into our warehouse and had the cans all wet, and simply set them up to dry off, without damage to them.

Mr. BOGLE.—I move to strike the answer as not responsive to the question.

A. You are trying to get me to tell you something—

Q. I am trying to get you to tell the facts, is all. Is it or is it not a fact that salt-water damage to shipments of canned salmon, if allowed to remain without overhauling and reconditioning, will cause the cans to blow, to become blown?

A. It will cause the cans, if enough water gets on the cans, it will cause the cans to rust and eat a hole beneath the rust, will eat a hole through the tin and make it leak.

Q. Will it or will it not cause the cans to be blown?

A. If there is a hole there it cannot puff.

Q. I am not talking about a hole in them, but one witness this morning stated that salt water would cause canned salmon to blow, unless it was wiped off, is that not a fact?

(Testimony of Charles A. Burekhardt.)

A. Water upon tin, salt water gets on there it will cause rust, and rust will eat through the tin, and of course the moment there is a hole in that can it will spoil, become a bad can. If the hole should not close up by fish getting in there or anything else—if it closes [152] up it may possibly puff, but if the hole should stay open it would simply spoil and the contents run out.

Q. Now, salt water will cause considerable damage to canned salmon? A. It will to the tins.

Q. Now, what damage would the coal-dust, provided it did not come in contact with salt water, cause it?

A. What damage would coal-dust itself cause?

Q. Yes.

A. It would cause this damage that the cans would be unsalable.

Q. Now, how would that be remedied?

A. By cleaning it.

Q. And that would remedy the entire damage, coal-dust damage, provided there has been no salt-water damage?

A. It would have to be cleaned, probably the labels taken off and relabeled.

Q. Can you tell what proportion of this damage was caused solely by coal-dust and what proportion was caused by salt water, either becoming mixed with coal-dust or alone, Mr. Burekhardt? A. No, sir.

Q. Is it not a fact that a large proportion of the damage was by reason of salt water, or other water coming in contact with the coal-dust?

(Testimony of Charles A. Burckhardt.)

A. No, sir, I could not state that.

Q. You do not know what that proportion would be?

A. No, sir, because Mr. Horner was employed by these people to overhaul that cargo, and we had confidence enough in him to let him go ahead and do it, and we [153] did not keep any check on him.

Q. At the time of this conference between yourself and Mr. Hall and Mr. Dawson and Mr. West, how much salmon had been unloaded from the ship?

A. I think the entire cargo had been discharged.

Q. How many cases were on the dock?

A. I could not say definitely how many cases, somewhere around four thousand cases I would say, offhand; three or four thousand cases. I have not any distinct recollection of that.

Q. If Horner says 2100 or 2200, would you say that was about correct?

A. I would say so; he is in a position to know.

Q. Did you have a representative at the ship during all the time that this salmon was being unloaded?

A. The greater part of the time.

Q. Who was there representing you?

A. A man by the name of Palmer.

Q. He was there for what purpose?

A. He was there to try to help them pick out the wet cases and keep them from going over into the warehouse.

Q. Now, these wet cases which had been picked out by Mr. Palmer, your representative, and Mr. Hall, the warehouseman, were placed in a pile on the

(Testimony of Charles A. Burekhardt.)

dock? A. Not all of them, no.

Q. Where were they placed?

A. Some were taken into cars and transferred around to the other warehouse.

Q. Some wet cases taken out of the shipment?

A. Yes, sir. [154]

Q. Taken into cars? A. Yes, sir.

Q. At the time of this conference, did any of the parties examine any of the salmon which was in the warehouse? A. No, sir.

Q. Was there anything said about any of the salmon in the warehouse being damaged? A. Yes.

Q. What was said?

A. They said some of the salmon—

Q. Who said that?

A. I think it was Mr. Hall said some of the salmon had been taken on the cars and was to be switched around to the warehouse and pack it over there.

Q. Did he say how many cases? A. No.

Q. Did Mr. Horner notify you when he had finished overhauling the damaged cases which were left on the dock?

A. Mr. Horner came to us when he could not get his money from the insurance company.

Q. When he could not get his money from the insurance company, that is, from Mr. West?

A. Mr. Foreman.

Q. Mr. Foreman represented the insurance company? A. Yes, sir.

Q. They are not parties to this suit. Did Mr. Horner come to you after the 2000 or 2200 cases of

(Testimony of Charles A. Burckhardt.)

salmon on the dock were completed, and state to you in substance that there were some damaged cases in the warehouse? [155]

A. I do not know whether he did or not. I knew that there were. He may have told me that.

Q. Is it not a fact that he called your attention to it? A. No, sir.

Q. Did you ever notify Mr. West or Mr. Dawson, that there were any damaged cases in the warehouse?

A. No, sir.

Q. Did you authorize Mr. Horner to go ahead and recondition or overhaul this entire shipment?

A. No, sir.

Q. He did that himself, on his own initiative?

A. From his orders, I understood, from the insurance people.

Q. You had nothing to do with it? A. No, sir.

Q. At all? A. No, sir.

Q. You afterwards paid the bill?

A. Yes, or he would have libeled our salmon.

Q. He did not libel the salmon?

A. Because we paid the bill.

Q. You paid the bill?

A. Yes, sir. We had a conference in our office one day with Mr. West—

Q. Just a minute, Mr. Burckhardt, just answer my questions.

Q. What does this bill of \$778.47 cover, Mr. Burckhardt? A. That covers storage.

Q. On the entire shipment? A. Yes, sir.

Q. When was this shipment sold?

(Testimony of Charles A. Burckhardt.)

A. Sometime after March 20th. [156]

Q. Yes, but what time after March 20th?

A. I do not know.

Q. Did you have a sale for this shipment prior to March 20th?

A. Some of these goods were sold on arrival; some of these goods were to have gone to Manila at once.

Q. They were to go to Manila at once?

A. Yes, sir.

Q. Who were they going to at Manila?

A. To the Pacific Commercial Company.

Q. Who sold these? A. Kelley-Clark.

Q. How many of these goods were going to Manila at once?

A. I think there was two thousand cases.

Q. How did you fill that order for Manila?

A. I think they took it out of other stock; I am not positive just how it was filled.

Q. Did you have other stock on hand here at that time? A. I think there was.

Q. Was that other stock sold?

A. I could not say it was all sold; some of it was sold.

Q. Was there two thousand cases of this other stock that was unsold?

A. I do not remember, as a fact, Mr. Bogle, whether we took that or had some more salmon come down. I do not remember how we did manage that.

Q. Where was this other stock held here?

A. The Virginia people have all of our salmon.

Q. Do you remember how many cases there were

(Testimony of Charles A. Burckhardt.)

in this other stock? [157] A. No, sir.

Q. Was it the same grade of salmon?

A. Yes, sir.

Q. You took two thousand cases out of that instead of the "Jeanie" shipment?

A. That is my recollection.

Q. *Where* did this shipment go afterwards to Manila, about what date?

A. I do not remember that. I do not pay much attention to that part of the details of the business. Kelley-Clark are our sales agents. They look after all these details for us.

Q. Why do you say part of this shipment was going forward to Manila, why not a part of the shipment you were holding in the warehouse here, would it make any difference to you?

A. No. It is my recollection that this other shipment was sold, but not for immediate delivery. I think we staved these people off, or did something.

Q. If you do not know about this do not get it in the record, I want to get the facts here.

A. As I said to you, it is very hard for me to give you anything—

Q. Now, is it not a fact that if you had lost a sale of those two thousand cases of salmon, and had to replace two thousand cases of other salmon, and therefore lost the sale of two thousand cases and had been damaged that that matter would be rather fresh in your mind?

A. I have not said I was damaged any by not making a delivery, any further than I probably had to

(Testimony of Charles A. Burekhardt.)

pay [158] storage and these other charges against it, that would be the only damage.

Q. You are claiming interest on that salmon?

A. These charges that I have testified to.

Q. For delay in marketing the salmon. If there was no delay in marketing the salmon, you are not entitled to any interest?

A. There would naturally be delay in marketing if I had to delay a shipment on account of not having stock available.

Q. Did you have available stock?

A. That is what I am trying to tell you.

Q. Did you have available stock to fill this order?

A. I will have to get my records and look it up.

Q. Did you make any demand on Horner, or any request, that he rush the overhauling of any of this salmon, to meet this delivery?

A. I do not remember. I do not recollect whether I did or not.

Q. You do not remember when this salmon went forward to Manila, what boat? A. No.

Q. Would Kelley-Clark have that information?

A. I think they would.

Q. Were you or were you not delayed in marketing this salmon by reason of it being overhauled?

A. Well, that is a very hard question for me to answer, Mr. Bogle.

Q. Just answer it if you can, yes or no.

A. I cannot answer yes, that would not be a proper answer, [159] and no would not be proper. I will say that I could not answer that question, for

(Testimony of Charles A. Burckhardt.)

the reason that Kelley-Clark are in a better position to give you that information than I am.

Q. Would Kelley-Clark be in a position to give us the information as to the marketing of this entire pack? A. Yes, sir.

Q. And the length of time that it was held here in the warehouse? A. Yes, sir.

Q. Now, this insurance item of 93 cents per hundred per annum, you figure from January 10 to March 10? A. To March 20.

Q. You also figure storage for that time?

A. Yes.

Q. Have you the storage bill? A. Yes, sir.

Q. Have you paid that bill?

A. We have paid the bill, the regular bill; we have not segregated it at all. That is the rate we pay for our salmon at the Virginia warehouse, 25 cents for two thousand pounds.

Q. You have paid that bill on this salmon, have you? A. Yes, sir.

Q. If you had no market for this salmon at that time, between these dates, Mr. Burckhart, you would have had to carry the salmon in the warehouse just the same, would you not? A. Yes, sir.

Q. You were superintendent of the Yes Bay cannery and [160] had general charge of it?

A. Yes, sir.

Q. When did you leave there?

A. I left there on the second day of October.

Q. You were not present, then, of course, when this salmon was shipped out of there?

(Testimony of Charles A. Burckhardt.)

A. No, sir.

Q. And know nothing about the conditions when it was shipped out? A. No, sir.

Q. What was the distance it would have to be trucked from the warehouse to the ship?

A. I would say about thirty feet.

Q. Did you have any salmon left over from the 1911 pack? A. No, sir; not at the cannery.

Q. Did you have any left over in Seattle?

A. I think we did have a little left over.

Q. Now, this statement which you were reading from as to the market prices of salmon, etc., when was that statement prepared?

A. I prepared it to-day.

Q. That coincides with the statement of Mr. Small, does it not? A. Yes, sir.

Q. Is it or is it not a fact you prepared that from Mr. Small's books? A. No, sir.

Q. How did you prepare it?

A. I prepared it from circular letters that we have on file from Kelley-Clark. [161]

Q. What do those circulars contain?

A. Stating the offerings of salmon at these dates and the prices.

Mr. BOGLE.—I move to strike Mr. Burckhardt's testimony as to the market value of this salmon on the ground that it appears that he had no personal knowledge, and he took it from records compiled by other parties.

Mr. HANFORD.—I think that is the only way figures can be obtained after the transactions.

(Testimony of Charles A. Burckhardt.)

A. I can testify as to prices of salmon. I can bring statements up here from Kelley-Clark showing the value of that salmon, what we were paid for it at these dates.

Q. What do you mean by that, what you were paid for this particular "Jeanie" shipment?

A. No, what we were receiving for salmon of these grades at that time.

Q. The actual sales? A. Yes, sir.

Q. Made at that time? A. Yes, sir.

Q. Would Kelley-Clark also be able to give us that information? A. Yes, sir.

Q. I think you said you moved some salmon during January and February, 1913, did you?

A. Yes, sir.

Q. Do you know when that salmon was sold?

A. No, sir.

Q. Was it salmon which had been sold during or preceding winter for future delivery? [162]

A. I would have to refer you to Kelley-Clark, our salesmen.

Q. How did Kelley-Clark handle this salmon for you? If they have a sale, do they notify you to deliver a certain amount of salmon? A. No, sir.

Q. Or do they have the warehouse receipts?

A. They go right ahead and sell our salmon on agreement we have with them as to the prices, and they ship it out and attend to the collections.

Q. How did they get hold of the salmon?

A. The warehouse turned it over on receipts. Warehouse receipts.

(Testimony of Charles A. Burckhardt.)

Q. You delivered the warehouse receipts to them and they shipped the salmon? A. Yes, sir.

Q. If Mr. Small of Kelley-Clark had desired to obtain any of this "Jeanie" shipment, then it would have been necessary for him to present a warehouse receipt to the Virginia Street warehouse, and either make demand upon them or Mr. Horner for this salmon. He could not get it otherwise?

A. No, sir.

Q. In this claim for this period from January 10 to March 20, that covers the entire period that all of this salmon was in there, from the time Horner started to overhaul it until he had completely overhauled the entire twenty-nine thousand cases, does it not? A. Yes, sir.

Q. Now, during that period of two months or more, as time [163] progressed, he, of course, had a larger amount of available salmon ready for shipment? A. Yes, sir.

Q. So that in no event were you delayed for that period in disposing of the entire 29,000 cases?

A. I think we had other salmon that we brought down shortly after.

Q. Do you know when that was?

A. I do not remember the dates.

Q. That was also available for sale and delivery?

A. Yes, sir.

Q. Do you remember when all that salmon was sold?

A. It was all sold during the early part of 1913. I do not remember when deliveries were made on it;

(Testimony of Charles A. Burckhardt.)

it was practically all cleaned up.

Q. You stated before that you did not know whether it was all delivered before September or not.

A. No. Our 1912 pack was all sold at the time I came back from the cannery, it was all sold.

Q. Your bills of lading were delivered to the warehouse man? A. Yes, sir.

Q. And, as far as you know, they are still in his possession? A. Yes, sir.

Q. Mr. Burckhardt, was this salmon in any better condition, after Mr. Horner reconditioned it than it was at the time it was offered for shipment to the "Jeanie"? A. Any better condition?

Q. Yes. A. No. [164]

Q. Was the reconditioning or overhauling by Mr. Horner such that it placed you in a better position to dispose of this pack? A. No, sir.

Q. It appears from Mr. Horner's report, I think Claimant's Exhibit 1, that there was some 58 cases of swells taken out of this shipment? A. Yes, sir.

Q. Now, if this shipment had gone forward, they would have come back as a claim against you?

A. Some of it probably would.

Q. Mr. Horner also testified that he guaranteed every case overhauled by him, and stood back of every case where claims were made against it. Now that would relieve you of any claims of any kind or description?

A. Who did he give that guaranty to?

Q. You know nothing about that guarantee?

(Testimony of Charles A. Burckhardt.)

A. No.

Q. If Mr. Horner made such a guarantee relieving you from possible claims, would not that be a benefit to you in the disposition of this salmon?

A. No, I do not think it would. We do not require any guaranty on our pack.

Q. Well, a guaranty on the pack relieving you from any possible claims?

A. I do not know anything about Mr. Horner's financial condition, whether his guaranty would be of any value to us or not.

Q. If it is of value?

A. As a matter of fact one-sixth of one per cent of swells [165] and puffs picked out of a shipment of thirty thousand cases is a very low estimate.

Q. You figure one-sixth of one per cent?

A. One-sixth or one-fifth of one per cent on thirty thousand cases.

Q. You figure the overhauling was of no benefit to you? A. No.

Q. Even with Mr. Horner's guaranty back of it?

A. No.

Q. You paid Horner's entire bill, did you?

A. Yes, sir.

Q. Is there not an item of a hundred and some odd dollars still unpaid? A. Of Horner's bill?

Q. Yes.

A. Not that I know of.

Q. Well, you do not know anything about that?

A. No.

Q. Was this cargo insured by you, Mr. Burck-

(Testimony of Charles A. Burckhardt.)

hardt? A. Yes, sir.

Mr. BOGLE.—We make demand for these insurance policies, not now but to be produced during the progress of the case.

Mr. HANFORD.—We will produce them if we have them.

Q. In making foreign shipments, Mr. Burckhardt, do you overhaul or go over the cases as they arrive from Alaska before shipping them?

A. Do we overhaul them?

Q. Yes.

A. We never overhaul them unless the buyer wants to make an examination, he then gets it subject to examination [166] or later on there.

Q. Do you make any extra preparations when you are going to make a foreign shipment?

A. We might perhaps strap the cases; sometimes they demand strapping.

Redirect Examination.

Q. (Mr. HANFORD.) Have you collected any insurance for this damage from the insurance company? A. No, sir.

Q. Have you made any claim on the policies?

A. No, sir—yes, we made a claim on them but they stated that it was not covered under our policy; only P. P. I. policy responsibility in this case.

Q. Is there any controversy pending as to the liability of the insurance people? A. No, sir.

Q. According to Claimant's Exhibit 1, which is a statement made by Mr. Horner of this entire shipment of 29,000 odd cases, there were 58 cases of

(Testimony of Charles A. Burckhardt.)

swells. Would that number of swells in that number of cases be sufficient to condemn the shipment?

A. No, sir.

Q. Or interfere with the marketing?

A. No, sir.

Q. What would be the effect if the salmon had been sold with that number of cases and discovery of the swells, what would be the process of adjustment?

A. They simply make a claim to us that that amount of swelled salmon has been discovered, within six months [167] after shipment.

Q. Is that a large or small average of swells?

A. That is a small average.

Q. In your position as a business man engaged in the salmon-packing business and marketing of salmon, keeping track as you have stated you did of the market price, you have an independent recollection of the market price in January, 1913?

A. Yes, sir.

Q. The memorandum prepared by you today from the Kelley-Clark circular, did that memorandum or circular which you prepared from the original sources of information merely verify your recollection?

A. It simply verifies my recollection of the prices.

Q. Having reference to that and having in mind your own memory of the matter, you state these facts as testimony that you are willing to stand by?

A. Yes, sir.

Q. (Mr. BOGLE.) Mr. Burckhardt, from your independent recollection, what was the market value

(Testimony of Charles A. Burckhardt.)

of these salmon in January, 1913?

A. Pinks 65 cents a dozen; chums 62 $\frac{1}{2}$; medium reds \$1.15.

Q. What was the price in February, February 1st, 1913—that was the opening market price was it?

A. Yes, sir. The market price of chums during the month of February were selling from 57 $\frac{1}{2}$ to 60 cents; pinks 65 cents; medium reds somewhere around 95 cents and one dollar.

Q. That is merely your recollection from keeping in touch [168] with the market, not from any actual sales made, that is the asking price?

A. That was the actual market price at that time which goods were selling for.

Q. Did you sell any during that time?

A. Yes, sir.

Q. During January and February?

A. Yes, sir.

Q. Now what sales did you make?

A. I could not tell you the exact sales, but I am positive that we sold salmon at those prices at that time.

Q. You are positive of that fact, are you?

A. Yes, sir.

Q. During January and February, 1913?

A. Yes, sir.

Q. For delivery, when?

A. I think it was immediate delivery then—some-time within thirty days.

Q. You have no recollection who you sold to?

A. Not without getting hold of our invoices. If I

(Testimony of Charles A. Burckhardt.)

had my invoices I could tell you; but I keep in pretty close touch with the market.

Q. Would Kelly-Clark have all that information?

A. They would.

Q. Have all the information you have?

A. Yes, sir.

Q. As to sales made for you during that period?

A. Yes, sir.

Q. Would they have all the information as to the amount of salmon you had on hand during that period? [169]

A. Yes, sir.

Q. Mr. Burckhardt, did you in your capacity as president of the Alaska Pacific Fisheries, or did the Alaska Pacific Fisheries, to your knowledge, make any claim against the steamship "Jeanie" or her owners, for this \$4283.06, if so, when?

A. Yes, we did.

Q. When? A. I could not tell you the date.

Q. Could not tell us the date? A. No.

Q. Was it in February or March, 1913?

A. No, it was after we paid this bill.

Q. It was in April?

A. Sometime after that time, I do not remember the date.

Q. Did you as president of that company, or the company ever make claim against the steamship "Jeanie," or her owners for this \$2,500 depreciation in salmon after the same was overhauled or reconditioned, prior to the bringing of this suit?

A. Not that I know of.

(Testimony of Charles A. Burckhardt.)

Q. Did you as president of the Alaska Pacific Fisheries ever make claim against the steamship "Jeanie" or her owners for the item of three months' interest, amounting to a thousand dollars, set out in paragraph 11 of your libel?

A. Not that I am aware of.

Q. Did either you, as president of the Alaska Pacific Fisheries or the Alaska Pacific Fisheries, ever make claim against the "Jeanie" or her owners for the item of two thousand cases which were damaged so that they [170] were unsalable amounting to \$4,500, as set out in paragraph 12 of the libel?

A. Not that I know of.

Q. Never made claim prior to bringing the suit?

A. Not that I know of.

Q. Did you, as president of the Alaska Pacific Fisheries ever make claim against the charterer for any of these items, with the exception of Horner's bill? A. Not that I know of.

Q. Did you ever make claim against them for Horner's bill?

A. I think we did. We have a letter from the owners.

Q. That was made subsequently?

A. That was made prior to the bringing of the suit.

Q. How long after the bill was paid?

A. I do not remember the dates.

Q. Was that demand made in writing?

A. I could not say as to that. We were going to libel the vessel and Swan brought us this letter guaranteeing that if the "Jeanie" was liable for this, that

(Testimony of Charles A. Bureckhardt.)

they would pay it, so that we would not libel the vessel and she could proceed on her voyage.

Q. If the "Jeanie" was libeled—

A. That they would be responsible for our bill.

Q. Was it not that they would put up a bond in this suit? Is that what you mean? You don't mean that they would pay all these damages you are claiming?

A. I do not think the damaged cargo was mentioned at that time, it was simply that they would pay what they were liable for; we were going to libel the "Jeanie."

Q. That is a matter that you took up through Kerr & McCord [171] was it not? A. Yes, sir.

Q. To arrange for a bond in case the libel was filed, is not that what you refer to?

A. No, they gave us a letter.

Q. Have you that letter here?

A. I think Mr. Kerr has it. I think Mr. West knows something about that thing. We were going to bring suit and libel the vessel, and we were trying to compromise the thing through Mr. Foreman, and we did not want the vessel to go out, because if she were lost we would have no claim, so they gave us this letter to protect our interests in case anything should happen to the "Jeanie."

Q. It was to take the place of the "Jeanie" in case you brought suit?

A. That is about what you might say it was.

Q. So that you would not have to make an actual seizure?

(Testimony of Charles A. Burckhardt.)

A. We were trying to adjust the matter at that time.

Q. That is about the time you brought the libel, was it?

A. No, the libel was brought long after that.

Q. You do not know when you made this claim, even approximately? A. No, I do not.

Q. (Mr. HANFORD.) State as well as you can, Mr. Burckhardt, what negotiations or controversy was pending, from the time of the reconditioning of the goods until this suit was commenced, if you had any dealings about that, what claim you were making, or what progress was made toward [172] getting a settlement of this matter before suit was brought.

Mr. BOGLE.—I object as incompetent and immaterial.

Q. I will change the question to obviate that objection. Have you made any claim, that you know of personally, against the "Jeanie" or her owners or representatives for this damage; if so, who was that presented to or in what way was that claim asserted?

A. The original claim we put in?

Q. The whole of it. You have answered that you did not make any claim for these specific items. Did you make any general claim?

A. No, sir. The only claim that we made was, Mr. Foreman and I were discussing trying to settle this matter of the overhauling charge of this salmon.

Mr. BOGLE.—I object, Mr. Foreman not being a party to this suit.

(Testimony of Charles A. Burckhardt.)

A. (Continuing.) He represented the insurance in the matter.

Q. I do not inquire about that. I want to know of any claim against the ship or her owners or representatives?

A. No. Mr. Kerr handled that matter for us.

Q. Do you remember about what time you put the matter in the hands of Mr. Kerr to get a settlement?

A. Immediately, at the time Mr. Horner presented his bill, and before the same was paid.

Mr. HANFORD.—If you can produce any insurance policy or contract of insurance, if you will furnish them to me, I will let Mr. Bogle see them.
[173]

It is admitted that the libelant is a corporation organized and existing under the laws of the State of Oregon.

Mr. HANFORD.—As to the claims mentioned in paragraphs 10 and 12 of the libel, subject to a conference with Mr. Kerr on the subject, I give notice to counsel that we will apply to the Court for leave to amend the libel by alleging that during the period of delay when the goods were being reconditioned, the market price thereof decreased and the libelant sustained further loss by depreciation and diminished market value amounting to \$7935.40; and by reason of said delay libelant incurred expense for shortage amounting to \$778.47, and cost of insurance \$150.47.

(Witness excused.) [174]

[Testimony of W. H. Horner, for Libelant.]

W. H. HORNER, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. HANFORD.) What is your business or occupation?

A. General handling of canned salmon and inspecting.

Q. Were you engaged in that line of business in January, 1913? A. Yes, sir.

Q. Do you recall the trip of the "Jeanie" in that month when she brought some canned salmon from Alaska? A. I do, sir.

Q. Can you fix the date on which she arrived or commenced to discharge her cargo?

A. Not without referring to the records, I could not,

Q. Well, in a general way, as near as you can. Do you know, however, that it was in the month of January?

A. Along in the month of January, yes, sir.

Q. Were you expecting to visit her on her arrival?

A. I was.

Q. For what reason?

A. Directions from the charterers or owners that there were some damaged goods aboard; they expected to find some damaged goods.

Q. State the occurrence in the morning when you were there?

A. I was making my usual rounds on the waterfront to the different warehouses and docks where

(Testimony of W. H. Horner.)

salmon are stored, and as I got to the Virginia Street warehouse I looked across the street and saw the "Jeanie" tied up at pier 10 on the north side, and they were taking off the hatches at that time. I went in the warehouse for a few minutes and came out and went aboard the [175] steamer and saw them taking wet cases from the hatch, right at the top of the main hatch. I stood around a few minutes and saw possibly two sling loads of wet cases came out. I went to the office and called up the Alaska Pacific Fisheries and notified them that there was wet cases in the top of the hatch and that they had better send somebody down to look after it. After doing that I went ahead about my business and paid no more attention to the discharging of the cargo. But at different times when I was passing I stepped in and saw the crew on the dock trying to segregate the damaged cases, those that were wet, from those that appeared to be dry.

Q. Now, while you were there, when you first saw them taking cases out of the hatch, give us an idea, approximately, of the number of cases that you observed that were wet. I want to know whether just two or three or a considerable number?

A. Oh, no, the square of the hatch, there was at least three-quarters of the cases at the top of the hatch—they had not got below the deck—that was wet. When they got in the hold of the ship I did not pay any attention, I notified the company that the salmon belonged to, and left it to the warehouse company to separate the salmon as it came out on the

(Testimony of W. H. Horner.)

dock, where they had a chance to see from both sides of the truck loads.

Q. You were passing and observed the discharging of the cargo, did you, while they were doing it afterwards?

A. At different times I was on the dock and saw the cargo coming from the ship's tackle to go in the dock and be examined and sent to the warehouse across the street. [176]

Q. Did you notice the condition of the cases then as they were coming out?

A. A lot of cases were more or less blacked up with coal-dust, water-marks, apparently bilge water, and a lot of them there was water running out, that is the cases were still wet.

Q. What was being done with reference to segregating the wet cases from the others?

A. There was quite a number of men on the dock watching each truck load, and also watching as they were put on the conveyor after they had piled out all the damaged ones that they could find, and other parties were watching on the other end of the conveyor to see if they could find any damaged.

Q. Do you know whether any officer of the ship in charge of the work was taking observations of these cases?

A. The first mate was there, I think it was the first mate, coming out of the hatch there, back and forth from the dock to the hatch.

Q. Do you know his name?

A. I do not, sir.

(Testimony of W. H. Horner.)

Q. Were you present at a conference between interested persons with respect to this cargo when it was discharged? A. I was.

Q. State who the gentlemen were that attended that conference?

A. Mr. West representing the insurance company, Mr. Dawson representing the steamship company, and Mr. Hall the warehouse company and Mr. C. A. Burckhardt, the packer. [177]

Q. You spoke of Dawson representing the steamship company. What company is that?

A. I believe Dawson at the time was interested in the charter of the "Jeanie" on this trip, and he was there representing Mr. Swan.

Q. (Br. BOGLE.) Do you know that?

A. Only from Mr. Dawson's own say so. He says I am here representing Mr. Swan.

Q. (Mr. HANFORD.) Where was this meeting?

A. It was right out in front of one of the wet piles, on pier 10, where the salmon was discharged.

Q. Now state what was done at that meeting, or concluded.

A. Well, some one of the parties, I do not know which one it was, said it was agreeable to overhaul the cargo and recondition it, and the balance of them voiced that sentiment, and agreed that I should do it, put it in a proper marketable condition, that was agreeable to all parties.

Q. Did you do that afterwards?

A. I did, sir.

Q. Now, state as particularly as you can, what you

(Testimony of W. H. Horner.)

found in handling the cargo, and what you did about it.

A. There was something like 2,000 cases, I think, that were set out on the dock as being damaged, and the balance went to the warehouse supposed to be in good condition. I put a crew on part of the side of the dock and started the work, and was taking up too much space as they had little space to spare, and we went over to the warehouse and finished up there, relacquered and labeled. [178]

Q. How soon did you commence on the dock?

A. After all the parties agreed I should do the work.

Q. How soon after it came out of the ship?

A. I think possibly forty-eight hours, something like that. A very short time. As soon as they found out practically the amount of damage, these different parties got together, and delaying matters did not help any.

Q. Proceed in your own way and tell what you did.

A. We went in the warehouse to clean up one parcel, that is one brand of this damaged salmon, that we had not started on the dock. Well, the crew worked on them, and while they were doing that I looked around some among the salmon supposed to be all right, and I found cases right on the face of the pile that were almost as wet as some that were set out on the dock. I opened them and found the same condition as the others on the dock, and in going through to see how they were I found cases that were

(Testimony of W. H. Horner.)

all stained, that is inside, all covered with dry coal-dust, as well as some moisture from the dampness. These cases are not perfectly tight, there is a two-piece bottom on almost all salmon cases, permitting dampness to get in and this coal-dust would discolor the can, and that being the case I overhauled and reconditioned the whole parcel, and turned in the figures for them to the Packer and the Swan Navigation Company and also the insurance people. I first turned it over to the insurance people, and they said tender it to Swan and he said hand it to the packer. So all three parties had the bill and a statement of the amount of cases overhauled and material and labor [179] necessary to recondition.

Q. How many of the cases did you actually open?

A. Every case in the entire cargo. I can give the exact figures if you want them.

Q. No. What was the reason or necessity for opening every case?

A. I found cases that were apparently all right on the outward appearance, that were more or less covered with coal-dust. Cases where we would maybe find six cans along the inner edge or down the center where the crack is and where two pieces of the bottom came together. We would find coal-dust all over these cans necessitating the opening of these cases to put the cargo in first-class condition. They specified the cargo to me and not the damaged stuff that was set aside.

Q. Besides the cases being wet, what was the actual condition of the cans?

(Testimony of W. H. Horner.)

A. The cases had been wet and we had to whittle a lot of the labels off, due to the salt water starting rust on the cans, and they were still wet, and had started rust in different parts of the cans and the coal-dust had a tendency to dirty the cans as well as stain the labels more or less.

Q. What was necessary to be done with the cans where the rust had started?

A. They had to be cleaned with steel wool and benzine and then lacquered to prevent rust starting again.

Q. What proportion of the entire cargo did you remove the labels from? I do not mean the number, but what proportion. [180] I want to know whether you had to remove all the labels.

A. Oh, no. We removed only what was absolutely necessary. I used 198,200 new labels. There was 3964 cases lacquered and labeled.

Q. (Mr. BOGLE.) What are you reading from?

A. From a copy of a statement made out to the Swan Navigation Company. 29,657 cases overhauled. 3964 cases lacquered and relabeled. 124 cases lacquered only; that was unlabeled stuff they had to be lacquered. There was no labels on it when it came down.

Q. Is that all you had of these unlabeled cans?

A. 4088 cases cleaned and wiped that did not have to be relacquered, took the coal-dust off with benzine rags. 3964 cases we scoured and cleaned that was rusty, stuff that we found in the parcel.

Q. Are these cans you speak of that came down

(Testimony of W. H. Horner.)

without labels on, did you put labels on them?

A. No, sir.

Q. Just lacquered?

A. Just lacquered and put them back in the same cases where I got them and put a new side on where broken or a new bottom, to make a good parcel, such as received at the cannery.

Mr. BOGLE.—I object, the witness could have no personal information as to what condition the shipment was when taken out of the cannery.

A. My dear sir, I have been in lots of canneries, dozens of them.

Mr. BOGLE.—You might have an idea but you do not know [181] personally what condition the shipment was in.

Mr. HANFORD.—We will show that.

Q. (Mr. HANFORD.) In regard to the cases themselves, these boxes, what about them? What did you do in regard to supplying new boxes?

A. Where I could put a new side or a new bottom on a case and make it a complete case I did it. Where the cases were stained so that they looked like a damaged case when a merchant would open them, they were thrown aside.

Q. How many new cases did you actually supply?

Mr. BOGLE.—We have no objection to the introduction of the bill of Mr. Horner, it shows all that information.

A. There was 2650 new cases. 2300 extra sides. 5950 extra tops, that was tops and bottoms both.

Q. Is that your bill?

(Testimony of W. H. Horner.)

A. Yes, sir, that is in my handwriting.

Q. Is that the original?

A. That is my segregation showing the amount of each brand, etc., that was overhauled.

Mr. HANFORD.—We offer this bill in evidence.

Paper marked Libellant's Exhibit "A," filed and returned herewith.

Q. What is the extent of your experience in this line of work. How many years have you been engaged in it? A. Fourteen and a half years.

Q. During that time have you been active and handled a great many cases, a great many consignments of canned salmon?

A. I have handled practically all of the Alaska salmon, [182] with the exception of one packer that came to Seattle in the last nine years, on a contract basis.

Q. From your familiarity with handling that line of goods are you able to definitely determine, so as to know in your own mind, the cause of such conditions as you found in this consignment?

A. I should say, yes; when I saw it coming out of the ship wet, with only a part of the cargo wet and the balance showing the condition it did.

Q. With regard to the coal-dust you found or dirt, or rust on the cans, can you form an opinion as to when and how that occurred?

A. Only by the report of the officers.

Q. Is there any inherent condition in canned salmon that is likely to deteriorate the goods in making a sea-voyage, when properly packed? A. No, sir.

(Testimony of W. H. Horner.)

Q. In doing this work of reconditioning this consignment, for whose particular interest were you careful to get the best results? A. My own.

Q. Well, in regard to the other parties, were you a partisan anyway, as between the interests of the owner of the cargo and the charterer of the ship?

Mr. BOGLE.—I object as immaterial.

A. I guarantee all the work I put out; I stand behind it and protect both the insurance company, the steamship company and the packer against any claims coming in; they will not fall on them but fall on me personally.

Q. The amount you charge for materials and service in [183] reconditioning this cargo, how does that compare with the actual and necessary cost, or the reasonable cost for the value of the service?

A. It is a just cost. I submitted bills from different parties for different materials bought in large quantities and at wholesale prices.

Q. To whom did you render your bill for payment?

A. The insurance company, Swan Navigation Company and the packer.

Q. Who paid it? A. The packer.

Q. And you were paid the full amount, the actual amount as shown on this bill? A. Yes, sir.

Q. When was that paid?

A. That was paid—I haven't got this bill receipted, I would have to look at my book at the office to see when it was paid. It was some two or three weeks after the bill had been rendered, because the parties had not made up their minds just who was going to

(Testimony of W. H. Horner.)

pay it. It was some time after the bill had been rendered. The date of that bill is March 21.

Mr. BOGLE.—This exhibit shows the bill as paid April 8, 1913.

Q. Had all of the cans been lacquered?

A. No, only those we reconditioned.

Q. I mean when they were packed?

A. No. Some were lacquered. Most of them had the enameled top and bottom.

Q. And then the label? A. Then the label.
[184]

Q. Around the body of the can? A. Yes, sir.

Q. Could the wet or stained or soiled condition of the cans be caused by the ordinary sweating of the cargo?

A. None of the cans I saw, no sweat that would cause the stain on the labels.

Q. What was the appearance generally of this lot of salmon as to having been well packed and fit for market?

Mr. BOGLE.—You mean well packed into the ship or into the cases?

Mr. HANFORD.—Into the cases.

A. The salmon we overhauled and put back in the pile ready for shipment, we found in A1 condition, in fact had been shipped out all over the country and had no complaints or objections whatsoever to any of the conditions. The balance of the cargo that was reconditioned, has been shipped also, but there has been no complaint from it. Some of it has been shipped to foreign countries and we have had no

(Testimony of W. H. Horner.)

complaints or claims from any source where this salmon was shipped. We found it in good condition, the cans clean, labels well put on. In going through the cargo I found sometimes four, six or eight cans to the case that had to come out due to coal-dust, where the case was apparently dry and looked all right from outward appearance.

Q. I wish you would state what you observed with reference to the style or manner of packing and the condition of the goods before they were shipped at the cannery.

A. The only reference I can give to that is some seventy or a hundred thousand cases that I had received previous [185] to this shipment coming down, that I merely made an examination for condition and quality and reported that.

Q. Could you judge from the appearance of the cases whether at the cannery, before they went into the ship, they had been properly packed for market?

Mr. BOGLE.—This witness could not tell the condition of the shipment before it was loaded aboard the vessel at the cannery. I object.

A. I can only say the condition of the previous cargoes, the same pack, the same year; I have never been at their canneries.

Q. Did you examine any consignments coming from these same canneries, that came subsequently to this? A. Yes, sir.

Q. What condition did they come in?

Mr. BOGLE.—I object as incompetent and immaterial.

(Testimony of W. H. Horner.)

Q. I want to show the condition of competency of the owners of this cargo in putting up their goods for market, by what appeared in these cases and previous consignments, and consignments that you know about?

A. On the previous shipments we found a few cases sprung and that is a trifling loss; the contents we found to be all right, and making an examination for foreign buyers, I found both the contents of the cases as well as the contents of the tins A1.

Cross-examination.

Q. (Mr. BOGLE.) Mr. Horner, have you a contract with the Alaska Pacific Fisheries to overhaul and recondition all their salmon? [186]

A. I have a contract, I have a printed price list for my services, subject to any and all, transportation, insurance and packers, with the exception of one packer.

Q. That includes the libelant in this case, the Alaska Pacific Fisheries?

A. Yes, sir. If he wants my services I have a price for him, if he pays the price he can get it.

Q. Mr. Horner, could you give us some estimate or idea of the number of cases overhauled and reconditioned by you during the season?

A. Overhauled and reconditioned, you mean by that general handling and preparing for shipment?

Q. Yes, sir, for the eastern or foreign market.

A. Oh, I should say, something like 700,000 cases.

Q. The season. What proportion does that bear to the usual pack which passes through here, the

(Testimony of W. H. Horner.)

Alaska packing season?

A. Depends altogether on the season up north. It will average about 700,000 a year for the last three or four years, general handling by myself here in Seattle.

Q. What proportion is that to the entire pack, just roughly?

A. It is about one-quarter of the pack that comes in here. The Frisco pack I pay no attention to.

Q. That one-quarter of the pack includes the Sound pack?

A. No, just the Alaska pack that comes into the city of Seattle, shipped through Seattle.

Q. You did not overhaul any of the Sound pack, did you?

A. I overhauled 65,000 cases for one packer this season.

Q. As a rule, do you overhaul very much of the Sound pack, Mr. Horner?

A. Very seldom. I make a specialty of Alaska business. [187]

Q. Is there any difference in the condition of the Sound pack and the Alaska pack, which makes it necessary to overhaul the Alaska pack, that is, overhaul a larger proportion?

A. The Alaska pack the canneries are so situated that they cannot tell during the selling season as to how much of this brand or that brand they are selling, therefore they are compelled to bring a certain amount of salmon down unlabeled to take care of their sales on particular brands, where they have

(Testimony of W. H. Horner.)

three or four brands for each grade. The Puget Sound pack are all in touch and are able to get their orders within a few hours and fill them as they are packing, and they have plenty of help. It is not like the short season in Alaska. The general overhauling and labeling is all done here on the Sound in the canneries as the orders come in.

Q. Then, Mr. Horner, it is customary to overhaul quite a large proportion of the Alaska pack upon arrival in Seattle before shipment to eastern or foreign markets, is it not?

A. Out to the westward and in Bering sea principally, some in southeastern Alaska. We have very little business out of southeastern Alaska, due to the fact that they have boats practically the year round and can clean up the packs by getting their orders by cable, and take care of their orders as they come in.

Q. Where are the canneries of the libelant in this case, Yes Bay, Chilkoot and Chomly, situated in Alaska?

A. Chomly cannery is on Chomly Sound; Yes Bay I think down near Ketchikan, and Chilkoot cannery is a short ways from [188] the last mentioned. I think that is where they are. I have never been to the canneries; never been in Alaska.

Q. All these canneries are in what are called Southeastern Alaska?

A. Southeastern Alaska in the regular meaning of the salmon district. That same question would apply, as the Judge asked me as to the condition of

(Testimony of W. H. Horner.)

the canneries. I have never been in those canneries. I have been at Vancouver, B. C.

Q. That is whether they were in the southeastern or whether in the westerly?

A. They are in the district called southeastern.

Q. Do you know what proportion of these cases in this particular shipment were labeled and lacquered and ready for market?

A. There is a statement attached showing the exact number.

Q. Have you that statement? A. Here it is.

Q. What I want to get at is, the number of the entire shipment which were lacquered and labeled at the cannery before the shipment for Seattle.

A. This is it here. There is 1583 unlabeled medium reds; and ninety more unlabeled, the balance of it labeled. Here are the brands, Empire, Star, etc.

Q. All of these cases were labeled and lacquered with the exception of these two lots which you have mentioned, amounting to 1673?

A. Some lacquered, mostly with lacquered tops and bottoms.

Q. Aside from that was there anything to be done to place them on the market? [189]

A. Merely to open; we took out any and all cans we found stained with coal-dust in the dry cases.

Q. What I am getting at, Mr. Horner, was there anything to be done to the balance of the shipment, providing there was no damage, was it in such con-

(Testimony of W. H. Horner.)

dition that it could be placed on the eastern or foreign market?

A. 1600 and some odd cases would have to be labeled, the balance nothing to be done.

Q. They were all ready for the market?

A. Ready for market. Nothing more, as far as the packers were concerned. Some foreign buyers might want the cases iron strapped outside. The packer was ready with the exception of this 1600 cases.

Q. Mr. Horner, when do you do most of the overhauling of Alaska shipments, at what period of the year?

A. Beginning about the middle of August up until the middle of January we are busy with a big crew.

Q. When does the largest proportion of these shipments come down?

A. From the middle of September until the latter part of October. The first of September until the latter part of October. I think we do get salmon from southeastern Alaska in July, but the heavy shipment is between these other dates.

Q. When does the salmon season close, the big season, if you know, in Alaska?

A. There are different times for different districts.

Q. Southeastern Alaska?

A. I think they close some time—there are different grades that run different times. Take the red run, the pink run; [190] this medium red run was late; but the fishing season I am not acquainted

(Testimony of W. H. Horner.)

with up there. The Puget Sound season starts in the latter part of July, and they keep on fishing and canning until in the latter part of December on the different grades as they run.

Q. I am talking about Alaska.

A. Alaska I am not acquainted with.

Q. Then in shipments of this kind and size, Mr. Horner, would it or would it not be customary to overhaul or examine the entire shipment before passing it to be shipped to an eastern or foreign market?

A. No, when a ship comes into the dock and gives a clean bill of lading, we never look into it, unless it is the first shipment of the season, and then we come down and open a number of cans to get at the condition and quality; we look at the labels and make an examination of the condition of the parcel and make an examination to protect the packer, broker and buyer.

Q. Then do I understand you to say that if this shipment had not shown on the surface some wet cases that you would have made no examination or overhauling would have happened, and it would have been forwarded to the eastern market?

A. Not until the goods had been sold. Then the 1600 and some odd cases of medium reds unlabeled would have had to be labeled.

Q. You would not have examined the entire shipment unless it showed exterior damage?

A. We had previously made examinations of the pack and found it to be all right. [191]

Q. You would have made no particular examina-

(Testimony of W. H. Horner.)

tion of this shipment? A. No.

Q. It would have been passed to the eastern market?

A. It would have been passed to the domestic or foreign market as all right. The balance of the pack was all right. We would have to examine every parcel that goes foreign. We have to make an examination on account of all these shipments.

Q. You have to examine every package?

A. No, not every package. You are entitled to open ten per cent of the parcel until you are satisfied that the quality is all right. You may cut into every twenty-five or thirty cans or you may go in every 200, depending on the size of the parcel. But you take them from here and there from all parts of the pile, taking the weights and condition and quality.

Q. Mr. Horner, if this shipment had been packed for five or six months and had been lying at the cannery during that time, would it be customary to make an examination or overhaul the shipment on arrival here? A. No, sir.

Q. There is no deterioration or damage by discoloration or otherwise to a shipment that lies five or six months in an Alaska cannery?

A. I have had shipments come here that had stood at the cannery all winter and they came down here and they were in good condition; the labels were not loose, the cans had not rusted and they were in perfect condition.

Q. That would not apply to all shipments coming down? [192]

(Testimony of W. H. Horner.)

A. That would apply to all shipments if they were not damaged by water. I have received them from all districts in Alaska when they left them there over the winter.

Q. It would be immaterial where they were packed or where they were held at the cannery?

A. As long as they are held in a dry place.

Q. In a dry place. If they were not held in a dry place?

A. The can is liable to get wet, and you would find the label loosened up on you.

Q. Now, Mr. Horner, you stated that you were expecting to visit the "Jeanie" upon her arrival. State what you mean by that, I did not quite get your explanation?

A. Mr. Swan, I don't know whether by cable or how he received the facts, stated that the "Jeanie" had some damaged salmon aboard, and he telephoned down to the Alaska Pacific Fisheries office stating that there were damaged salmon. And I cannot state positively whether I saw Swan on the street, but he called my attention to it or I was notified from the office that when the "Jeanie" came in there was liable to be a little work because Swan reported damaged salmon.

Q. Do you remember when that information was first conveyed to you?

A. That was the day before the "Jeanie" got in, I think.

Q. You do not know where Swan had received his information that the salmon was damaged?

(Testimony of W. H. Horner.)

A. I understood it was by advice from the ship; supposed by cable.

Q. That you do not know?

A. No. He did not know anything. He said there was some. [193] damaged salmon on the ship.

Q. You, of course, did not know the condition of this salmon at the time they were loaded aboard the ship in Alaska? A. No.

Q. That was sometime in December that they would be loaded? A. When it was loaded.

Q. Where were they taking the salmon from when you first noticed it, Mr. Horner?

A. Taking them out of the main hatch; the large hatch right in front of the pilot-house, in front of the bridge.

Q. How many hatches has she forward, do you know? A. Has two, I think.

Q. And this hatch from which they were taking these wet salmon was that one immediately in front of the pilot-house?

A. Yes, right in front of the pilot-house, the big hatch.

Q. Did you notice, or make any examination, to see where the salmon was coming from?

A. The cannery marks on the cases?

Q. No, from what portion of the ship?

A. Coming right from the top of the hatch; they had not cleared the hatchway; merely had the tarpaulin covers off and were getting down under the deck.

(Testimony of W. H. Horner.)

Q. This salmon was immediately underneath the main hatch forward of the pilot-house?

A. It was.

Q. And the salmon, you said, was in a wet condition? A. The cases were wet.

Q. Were you present during the entire time that this salmon was being taken out of the "Jeanie"?

A. No, sir. [194]

Q. Did you know, or could you state, from what portions of the ship the wet salmon was taken?

A. No. All I saw was right in the top of the hatch, the cases were wet and I had no interest in it whatsoever outside of when they got ready for me to do business. I had business to attend to and there were enough people there to look and see where it came from when they were segregating it; and when they got it segregated it was time enough for me to go in.

Q. You were not present when the salmon came out of the ship and was segregated on the dock?

A. Only as they started the main hatch. I stopped at times going up and down the water front; they were still segregating it.

Q. Were they still unloading from the main hatch?

A. They were still unloading from the main hatch and taking some out forward, another hatch near the forecastle-head.

Q. Did you see any damaged salmon coming out of any of the after hatches?

(Testimony of W. H. Horner.)

A. I did not pay attention to it. I do not know what came out.

Q. Did you see any damaged salmon unloaded from the between decks or the lower hold?

A. I did not pay attention to it. As I say I went aboard and saw the hatches off and found wet cases before they got down below the deck and I went and reported that to the Fisheries office.

Q. What was the condition of these cases, was there considerable water?

A. The cases were wringing wet all around.
[195]

Q. That was underneath the hatch?

A. Right underneath the hatch, that is in the square of the hatch. If you have six or eight crews up and down the water front to look after you cannot spend much time looking at damaged cargo coming out. I had nothing whatsoever to do with the cargo until after it was segregated when I would be ready to go ahead.

Q. Mr. Horner, was this hatch from which the salmon was taken immediately in front, forward of the large hatch?

A. It was the great big hatch—have you seen the boat?

Q. Yes.

A. That is the one the salmon came out of, that was the large hatch, where they had their slings, that is the main hatch.

Q. Did you notice whether any of that salmon coming from the main hatch, whether any of it was

(Testimony of W. H. Horner.)

damaged by coal-dust?

A. That I could not say. There was salmon on the dock damaged and cases all stained; some were all black all around. What hatch they came out of I do not know. The segregation was made on the dock after coming on the inside.

Q. You did not notice the salmon damaged by coal-dust until after it had been unloaded and segregated on the dock? A. No.

Q. You do not know where that salmon came from, what portion of the ship? A. No.

Q. Who was engaged in segregating this damaged salmon?

A. I saw the warehouse people looking after it, and there were a number of other parties around. I did not pay [196] attention to it. The warehouse people make a segregation of the salmon to get the different grades and brands, and I think the same crew that was doing that tried to get out this wet cargo.

Q. The wet cargo or damaged cargo was placed in piles on the dock? A. On the dock.

Q. And the salmon which was apparently undamaged was taken into the warehouse, is that correct?

A. Yes, sir.

Q. How many cases of damaged salmon was there on the dock?

A. I think somewhere close to 2,000 or a little over 2,000 cases of the different brands all told. I haven't that particular information.

Q. Now, Mr. Horner, at the time of this confer-

(Testimony of W. H. Horner.)

ence between Mr. West and Mr. Dawson and Mr. Burckhardt and the warehouseman, was this damaged salmon all segregated and loaded on the dock?

A. As far as they knew it was, yes.

Q. And the balance was in the warehouse?

A. Yes, sir.

Q. Did any of these parties at that time make an examination of the salmon in the warehouse?

A. I do not know.

Q. Is it not a fact that their conference, and the authority which was given to you at this conference, related solely to these two thousand or more damaged cases which were on the dock?

A. Not from the way I understood it. I was to put the cargo in condition and was constantly finding wet cases in the [197] stuff supposedly all right, that was part of the cargo.

Q. That was found later?

A. That was found while we were working on the dock salmon lots, some of the lots were already started and one brand had been sent to the warehouse.

Q. But these were found later. At the time of the conference the only damaged cargo which was apparent was the cargo of two thousand cases lying on the dock? A. Yes, sir.

Q. And these parties made no examination, that you know of, of the salmon that was in the warehouse?

A. No. I do not know of anybody examining it. My foreman found wet cases and called my atten-

(Testimony of W. H. Horner.)

tion to it and I looked around and found quite a number.

Q. We will take that up later. And you say that at that time they agreed that you should recondition this cargo?

A. That I should recondition the cargo.

Q. Did Mr. West agree that that should be done?

A. Mr. West said that I was agreeable to him, that is agreeable to him for me to do the work.

Q. For whose account was that work to be done, did you understand that?

A. No; that is the reason I had to wait some time for my money.

Q. Was it not the agreement that that damaged cargo should be put in condition without prejudice to the rights of any of the parties?

A. As far as I know, I do not know of anybody asking for any preference, if they had it would have done them no good. I don't give a damn for any man that lives, and if they don't like it they can beat it and get some one else to do it. [198]

Q. You misunderstand me. I mean without prejudice as to their liability or their rights.

A. I did not know who was to pay the bill. I thought it was up to the insurance company, but it was not, evidently. It would not have cost anybody a cent less or more whether it was the insurance people or not; I have one price.

Q. What I want to get at is whether any particular member at that conference told you to go

(Testimony of W. H. Horner.)

ahead and do the work and he personally would pay you?

A. No. Everybody said it was agreeable for me to do the work.

Q. And you went ahead and placed these two thousand cases in marketable condition and did whatever was necessary to them, and it was after that that your foreman found that some of the cases in the warehouse were also damaged by water?

A. He found one wet case on the side of the pile and called my attention to it and I looked over there and found a number of them and I told him to go ahead and overhaul the entire cargo.

Q. That was because you found a number of wet cases?

A. That was because I found a number of wet cases on the face of the pile that was supposed to be O. K. and ready for shipment, that is that was not damaged by the ship.

Q. How many wet cases did you find in addition to the 2,000 that were on the dock, segregated and placed on the dock?

A. We found something close to a thousand cases, more or less wet. Where the cases were only wet a trifle on the bottom but the water had gotten through and stained the labels, they had to be stripped and relabeled. [199]

Q. That would make 3,000 wet cases altogether, approximately? A. Yes, sir.

Q. That was out of the shipment of 29,000?

A. Yes, sir.

(Testimony of W. H. Horner.)

Q. And did you find any other damage—upon re-conditioning the cargo, did you find any other damage to that cargo that was in the warehouse?

A. We found more or less cases apparently dry that was gummed up with coal-dust, and we could not get it off without taking benzine and cleaning the cans and it would cut the enamel and cause the can to be relacquered. In some of these wet cases we found that we could take the labels off and wipe the cans and still relabel that same can and not have to lacquer it.

Q. Do you remember how many cases you found damaged with coal-dust?

A. No, I did not keep account of them.

Q. Can you give an approximate idea of it?

A. I can give you the total number of cases in each brand damaged both by water and coal-dust.

Q. I want to get at the number of cases that were damaged wholly or partially by coal-dust?

A. Now, that is something, unless you had someone right there with pencil and paper figuring up and checking the cases, you could not do it. We would find half of a case that would be dirty and other cases we would find four or six or eight cans all gummed up all along the side, the crack on the side of the case that was open, a piece rubbed off in loading, and the coal-dust would settle down and get in that way. [200]

Q. So that you could not give us any idea of the number of cases which showed no damage whatever from coal-dust?

(Testimony of W. H. Horner.)

A. Why, no, I would not make any estimate whatever on it. If I had known that they wanted it I could have kept track of the exact number and condition of each case the whole way through. I think you have a list there covering this; here is the record turned in by my foreman, showing the number of cases damaged and what was done.

Q. In order to get this in I will hand you this paper and ask you what that is.

A. That is a copy of the condition, of the number of cases and the brands purporting to be overhauled on that boat. Here is the brand. Here is what was done on the work, showing how many cases cleaned and lacquered, cleaned lacquered and relabeled.

Q. This C. & L. means cleaned and lacquered?

A. Yes, sir.

Q. C. L. & Rel.?

A. Cleaned, lacquered and relabeled.

Q. The others, shorts and swells, have nothing to do with this case. That was compiled by your foreman?

A. Yes, sir, here is the record he kept of it. Here is a list he took off his book as he cleaned up each lot and I took a record of it.

Q. That is correct, is it? A. Yes, sir.

Q. How many cases does that show which sustained any damage whatever?

A. There is about 4,088 cases. [201]

Q. Of the 4,088 cases there are 89 cases from the Chilkoot cannery of the M. R. brand that were cleaned and lacquered?

(Testimony of W. H. Horner.)

A. There was ninety cases. Eighty-nine cases cleaned and lacquered. Ninety cases overhauled; there was one swell, making ninety cases.

Q. These cases were not lacquered at the cannery, Mr. Horner?

A. They were not labeled; they came down unlabeled.

Q. Then you did not label them? A. No.

Q. Were they lacquered?

A. I labeled them five or six months later when they were sold. They had a certain amount of the same grade of fish, that is the Empire brand.

Mr. BOGLE.—I offer this statement in evidence.

Paper marked Claimant's Exhibit 1, filed and returned herewith.

Q. Mr. Horner, did you recondition the entire shipment of 29,657 cases?

A. Less 13 or some odd cases found short.

Q. Well, you have charged for 29,657 there, that must be the total amount. And I think you mentioned that you found some 4,000 more or less damaged. A. Yes.

Q. And what did you do to the balance of the cases which you found had no damage?

A. Reconditioned them, put on a new side or a new bottom wherever necessary to make a good parcel out of it and placed them in the warehouse ready for shipment. [202]

Q. Your overhauling charge then covers your examination of the entire shipment and placing it in marketable condition, does it not, and as to the cargo

(Testimony of W. H. Horner.)

which was damaged?

A. There is no fee for examination, any examination made, just the price of the time charged there for material and for the services of the crew.

Q. You have charged six cents a case for 29,657 cases overhauled? A. Yes.

Q. What is that six cents charge for?

A. That is for going over the cases and setting out the dirty cans and renewal of the cases and putting the stuff in good condition.

Q. And of these cases, you found some 25,500 cases that were undamaged? A. Undamaged.

Q. And your charge of six cents applies to this 25,000 as well as to the 4,088 cases that you found damaged?

A. Yes, that is segregating the lot, renewing and putting in shipping condition.

Q. When you had finished with the overhauling of the 25,000 and some odd cases were they in any better condition than when you started, the undamaged cases?

A. With the exception that the dirty cans had been removed otherwise the parcel was practically in the same condition that the previous shipments had been.

Q. Well, did you find dirty cans in all these 25,000 cases?

A. No. We would go along for sometimes fifty or seventy-five or a hundred cases and not find any, and then [203] would get in a mess, we would find a streak of them.

Q. These cases that were undamaged, did you do

(Testimony of W. H. Horner.)

anything to these cases besides examining them?

A. Opened them up and handled every can and threw out any dirty cans we could, or stained cans.

Q. You did not quite get the questions. Where there were no damaged cans to any case, you merely opened it up and examined the cans and then boxed it up again, did you? A. Yes, sir.

Q. And the charge of six cents is a general charge over the entire cargo? A. Over the entire cargo.

Q. So part of that charge at least is for salmon which was undamaged? A. Undamaged.

Q. And that part is the greater portion of it?

A. No. You could not tell out of that cargo without going through it.

Q. Is not that true of most any cargo which arrives from Alaska?

A. We make an examination and if we find anything wrong we go through the parcel, whatever brand we find the trouble in.

Q. If you found any damaged cases you would go through the entire shipment?

A. We would report it to the packer and if he wants to protect himself all right, we go through everything shipped. If he don't want to protect himself he can take chances with the trade. Where there is damage [204] by water the steamship company invites me to go over it and I go ahead and I never know the packer in the deal.

Q. Did not you find a lot of swells by going through this, overhauling this entire shipment?

A. There is a list and total number of swells. I

(Testimony of W. H. Horner.)

have not got that added up here, but I have the number in each lot.

Q. What did you do with the swells?

A. Fifty-eight cases. The packers were notified of the swelled cans and they were then sent to the city dump.

Q. What do you mean by a swelled can?

A. A swelled can is a can swelled at both ends until the side collapses. The cause of it might have been that the can was not cooked properly, or may be there was a leak or something that later on had been closed up by a piece of fish and there was gas formed. That can might not have been cooked long enough in the first place and that would cause it to swell.

Q. The only way to find these swelled cans is to overhaul the shipment, is it not? You found one or more cans to the case, the same as you found dirty cans?

A. You would find one can or possibly two cans and in many cases you would not find any.

Q. The only way to find these swelled cans—they are not marketable, are they? A. No.

Q. And the only way of finding these is to overhaul the shipment, is it not? A. It is. [205]

Q. By overhauling the shipment you found 58 cases of swelled cans, forty-eight cans to the case.

A. Yes, sir. But shipments running that small they never overhaul for swells. You have to get a good heavy per centage before they will overhaul a pack for swells.

Q. These swells, if the shipment is sent to the mar-

(Testimony of W. H. Horner.)

ket, come back as a claim against the packer?

A. The packer hears from them later on through the jobber and through the broker.

Q. Do you know how many cases were damaged by coal-dust and by rust?

A. No. I told you a moment ago that if I had known they wanted an exact record kept I could have put on an extra man with a pencil and paper and kept him all the time and found just the number of cans damaged by rust and so many damaged by coal-dust and so many by water.

Q. Could you give us any idea of the proportion damaged by water and the proportion damaged by coal-dust?

A. I should say close to three thousand cases damaged more or less by water, some wringing wet and some the labels stained part way up.

Q. And the balance were damaged by coal-dust?

A. Coal-dust and some of the wet ones had coal-dust also, quite a number, where the dust caked on the top and damaged.

Q. Were there more than 1500 cases damaged by coal-dust?

A. Well, that I am not prepared to say. I should think there was at least that much, if not a trifle more.

Q. Would that be approximately, in your opinion, the number of cases which showed any damage by coal-dust? [206]

A. I think that would be a fair estimate.

Q. Mr. Horner, if this shipment had been wet at

(Testimony of W. H. Horner.)

the time of delivery to the ship, in Alaska, loaded in the ship in a wet condition, would that have affected the condition of the shipment on arrival here?

A. That would depend entirely on how hard it was raining and as to whether they left the hatches uncovered and let the salmon get thoroughly soaked.

Q. I say if it was in a wet condition at the time of delivery to the ship, in Alaska, and was wet when loaded into the vessel, would the fact that it was wet at the time it was loaded in the hold, in any way affect or deteriorate the shipment during the voyage from Alaska to Seattle?

A. It might cause a few of the labels to open up, but being wet by frost or fresh water, would not cause it to rust in that length of time.

Q. Would it cause the boxes to swell?

A. No, it would cause the boxes to tighten up. These boxes were made early and dried out and have set all season and that case would be loosened up, and the dampness would cause the box to swell and clinch the nail that much harder.

Q. Then, if they were wet by fresh water that would not damage the box in any way?

A. Unless you soaked it and then put it in a damp place; where you get salt water of course it will damage the tin.

Q. The boxes I am speaking of.

A. The boxes, no. [207]

Q. Would not damage it?

A. You can take a box out and soak it in fresh water and let it dry, it will almost dry the cans in

(Testimony of W. H. Horner.)

there. But you take salt water on a box and any can that it touches will rust.

Q. How would it affect the box?

A. The box absorbs the salt and you cannot get rid of it, but fresh water evaporates and does not hurt the wood.

Q. Then this damage to the boxes was caused by salt water wetting them?

A. The damage to the boxes was caused by both fresh and salt water, or bilge water, whatever the case may be, but they were wet and these goods had to be shipped and we had to put them in condition and therefore they required new cases. I did not go around and chew pieces of the wood to see whether it was salt or fresh water.

Q. You said salt water damaged the boxes and fresh water did not.

A. I say if you take a box or lumber and let it soak in fresh water and then let it dry out you can use that and it will not hurt, but if you do the same thing with salt water there is more or less salt adheres to the box and when it gets a little damp it will come out and cut the lacquer and start the rust.

Q. To get at it in another way, Mr. Horner, referring to Libellant's Exhibit "A," the items of 2650 new cases—

A. Yes.

Q. What necessitated the making of 2650 new cases?

A. Cases stained more or less by water and coal-dust where it ran down over, and we replaced the wet cases with [208] new cases.

(Testimony of W. H. Horner.)

Q. Were these wet cases in such a condition that you were afraid they would swell or were anxious to get the shipment ready for market and dispose of the case?

A. It was a case of personal responsibility when finished. I would not take a chance of putting your goods or any body else's goods back in these wet cases, and shipping across the continent where they go into Montana and these northern states the goods will freeze solid, and where they do there is more or less dampness and rust starts.

Q. You do not know whether the damage to the cases was caused by fresh or salt water?

A. All I know is they came out of the ship wet.

Q. Does that include the tops and sides?

A. Tops and sides; some we took off the side and top and bottom. If it was a stained top or a stained bottom and we would use as much as we could of the old case to keep down the expense.

Q. That was because of the wood staining?

A. Yes, sir.

Q. You do not know whether that was from fresh or salt water? A. No, I do not.

Q. What was the condition of this shipment, Mr. Horner, when you finished with it?

A. The shipment was in A1 condition, prepared to go to any part of the world for sale by any jobber in foreign or domestic countries.

Q. It was in first-class marketable condition?

A. It was in first-class marketable condition.

(Testimony of W. H. Horner.)

Q. You placed them in first-class marketable condition at an expense of \$4,283.60? A. Yes, sir.

Q. In your opinion could there have been any further damage to that shipment after you had finished with it?

A. Not unless they shipped it by salt water and got the cases wet and then the cans rubbing in the salt water would cause rust to start on the cans, even though lacquered and would stain the labels.

Q. That would be because of some damage?

A. In transit.

Q. That had nothing to do with the shipment from Alaska to Seattle?

A. No. After the stuff had been put in first-class shape and had been reconditioned it would have to be redamaged. That entire cargo has been shipped and we have had time to hear from any and all parts of the country and we have the first complaint to come in. If any came in somebody would have to pay, and they all know that I stand behind my work and I would have to pay these claims.

Q. The entire shipment has been sold?

A. The entire shipment has been sold and shipped.

Q. And there has been no claim for any damage?

A. None whatsoever.

Q. Did you personally know when this shipment was sold?

A. It was sold along last spring, latter part of the winter or early spring, when salmon moved pretty good.

Q. You did not keep particularly in touch with

(Testimony of W. H. Horner.)

this, you [210] do not know exactly?

A. All I know is orders came down for different lots of the "Jeanie" cargo, out of that.

Q. Did you keep in touch with it, Mr. Horner?

A. In the warehouse I did, because I wanted to know who was getting it so that if trouble came I would know who got the "Jeanie" cargo and did not get something else. Get so many from Chomly and Chilkoot and Yes Bay.

Q. What I want to know is whether you personally knew when it was sold?

A. No, I did not know when it was sold, but I know it was sold during that spring. Last spring there was a good movement of salmon and this cargo was shipped at that time.

Q. Do you know how long after you finished re-conditioning it?

A. I should say ninety days or better before the last of it was shipped.

Q. Mr. Horner, did you try to make any estimate at the time you examined this cargo, this 2100 cases of damaged cargo, as to the percentage that was damaged by coal-dust? A. No.

Q. Do you remember telling Mr. West that you estimated there was about 15 per cent damaged by coal-dust?

A. No, I did not. I do not know that I had made anything like that, because on damaged cargo or damaged lot of goods I positively refuse to give any figures.

Q. I do not mean any binding figures.

(Testimony of W. H. Horner.)

A. I know, but I say I will not give figures, because I might get into a case that is not damaged much and I [211] would be handing them wrong figures, and again it might turn out worse than expected, and so it is straight time and material I charge for. I do not recollect making an estimate as to what was damaged by coal-dust.

Q. Mr. Horner, how did the coal-dust damage the cans?

A. The dampness in the hold of the ship and this coal-dust in there would cause it to stick and to stain the labels more or less. Also sticks on the tops of the cans and makes them dirty in case where they had gotten in.

Q. What did you have to do to place that cargo in condition that was damaged by coal-dust?

A. I had to wipe the tops of the cans and take the labels off and relabel them and we had to relacquer.

Q. Well, these cans which were lacquered were cans which had been damaged more or less by coal-dust? A. Coal-dust and rust.

Q. The rust might have been occasioned by salt water as well as by coal-dust?

A. Might have been, yes. The coal-dust will not start any rust. It is dampness that causes it to stick to the cans. We cleaned them off and used benzine and that will cut enamel as well as lacquer.

Q. Referring to the second item of your bill, exhibit "A." That is for salmon that was lacquered and relabeled? A. Yes, sir.

Q. That was occasioned by dampness and coal-

(Testimony of W. H. Horner.)

dust? A. And rust. That amounted to \$426.13.

Q. And the next item is for cases which were lacquered? [212] A. Lacquered only.

Q. How was that damage caused, by rust?

A. No, that was where we had to take the labels off, and we found more or less damage from the labels. We went to work and relacquered and put them in proper shape.

Q. And the next item, salmon which was cleaned?

A. That is the total amount of stuff that was cleaned. We found them damaged, coal-dust and rust. That was the total for cleaning them. The other is the price for the labeling and lacquering alone and relabeling and lacquering.

Q. Where you would lacquer and relabel you would also clean the can?

A. I would not clean a can unless it needed cleaning. I most assuredly would not lacquer a can that was rusty or dirty.

Q. I say where you lacquered a can, would you previous to lacquering clean the can?

A. Oh, sure.

Q. So that item of 4088 cases cleaned would be the total of all cases which were either relacquered or relabeled or cleaned? A. Yes, sir.

Q. And that would of necessity be all of the cases which you found to be in any way damaged?

A. Damaged condition, of the entire cargo.

Q. 4088 cases out of the 29,657 cases?

A. Yes. That 4088 is made up of the following, 3964 lacquered and relabeled, and 124 is just lacquered.

(Testimony of W. H. Horner.)

Q. Did you during this period of December and January [213] overhaul any other salmon shipments that came down from Alaska?

A. When finishing up the season's work, all the goods that were brought down unlabeled, they had to be labeled to go out for shipment. We did not have to recondition any other shipment at that time that I can recollect.

Q. Did you overhaul any other shipment for any other cannery during that fall?

A. I had a couple of small shipments, I think, for the Alaska Steamship Company, and a couple from the Pacific Coast Company, small items, though.

Q. You did not overhaul any large shipment?

A. This is the second large shipment that I have overhauled since I have been in the business.

Redirect Examination.

Q. (Mr. HANFORD.) To make it clear, Mr. Horner, I wish you would define the difference between "overhaul" and "recondition"?

A. Reconditioning is a case where the salmon has been damaged and you have to go through them to find out the nature of the damage and if the same can be put in marketable shape, very well and good, And if not then the damaged stuff is put aside. Overhauling a shipment, the salmon or the salmon pack, we generally term it labeling and overhauling, that is going through and labeling or stripping and relabeling, depending on what brand they want on the salmon to fix up the shipment and complete the orders, where there is no damage shown. If we

(Testimony of W. H. Horner.)

find any defective cans they are thrown aside. [214]

Q. Now, you have just stated that this "Jeanie" shipment was the second large consignment that you have overhauled since you have been in the business?

A. Of damaged.

Q. That is what I want to have understood.

A. The second large damaged cargo, when I say large I do not mean a few hundred cases. The other shipment was some 78 thousand cases on the steamship "Meteor." That was damaged by concentrates.

Q. Then comparing the relative number of consignments of Alaska salmon that are overhauled, as with the Puget Sound packs, the larger number of Alaska shipments are for the reasons you have stated, and not because of goods coming from there damaged?

A. No. It is due to the fact they do not know what their sales are on this brand or that brand. They have to bring a certain amount down unlabeled to save expense of relabeling to accommodate their trade.

Q. There is one question I want to ask you that was omitted on the original examination—

A. Well, I think I did overhaul one cargo this past September or October for Libby, McNeil & Libby, 1100 and some odd cases, charged to salt water, bilge water. They only got eight hundred cases. The rust from the salt water had eaten through; it was six weeks after it was out of the ship. Taken out early in September and it cost thirty-five cents a case just to clean the cans, besides the new material and

(Testimony of W. H. Horner.)

the new labels. The expense ran up so high that I turned the time to McNeil & Libby and let them pay the cost themselves [215] so they would get next to it. They are new men coming and it was a good way to teach them what it cost.

Q. Are you frequently employed to inspect shipments that are being sold and sent away, for the purpose of ascertaining the condition, prior to shipment? A. Yes, sir.

Q. Is fifty-eight cases, in a total of 29,000 an unusually large proportion of swells?

A. In the 1912 pack in sanitary cans, it was very small. I had just finished overhauling 13,000 cases and I threw out over five hundred cases from one packer. Of that there was 50 some odd cases alone of swells and 200 and some odd cases of cans that had collapsed and that stayed collapsed. They were going to be sent back to his cannery to be reconditioned.

Q. Would the fact that there were 58 cases of swells have prevented this entire cargo from being marketable so as to be shipped?

A. No, sir. They never overhaul a parcel of salmon for a percentage of swells unless it runs heavy.

Q. Now, one question I omitted. I want to get at, as near as we can, the time that this lot of salmon was detained here and kept from the market by reason of this conditioning. How long did it take you to complete the work?

A. I started on it the following day or the day afterwards after the conference on the dock. I did

(Testimony of W. H. Horner.)

not finish until some time in March.

Q. The date of the bill, is that approximately the date when you finished? · [216]

A. That is about two days after the job was finished. I wanted a chance to check up and verify the figures before I put the bill in.

Q. (Mr. BOGLE.) Have you any note or memorandum showing the exact time you started, Mr. Horner, to recondition or overhaul this shipment, and the time you finished?

A. No. I would have to see my foreman. He keeps the time on the different jobs. I would have to see whether he had the records.

Mr. BOGLE.—Will you stipulate that he may get this and put it in the record later?

Mr. HANFORD.—I am willing. If you can find any memorandum of that kind, you can send it up here.

A. I do not usually keep the time book. When the people are paid off I throw it in the wastebasket and start a new one.

Mr. BOGLE.—Did you not state that it was customary to overhaul shipments where they were to be shipped for a foreign market?

A. We make examinations.

Q. Of what does the examination consist?

A. The examination consists of drawing samples, taking weights, and cutting for quality on shipments to foreign countries. There is a stipulation that one-half of one per cent is allowed for swells on the other side. Of course, if we find any swells to speak of, if

(Testimony of W. H. Horner.)

we find one per cent of swells here, the packer will overhaul for his own protection.

Q. As a matter of fact, Mr. Horner, the overhauling of this [217] entire shipment was for the protection and benefit of the packer, was it not?

A. Not necessarily, no.

Q. Did not you consider it was for the benefit, for his benefit, to recondition his entire shipment and overhaul it?

A. It was for the benefit of him in this way. He put it in condition so that he was not afraid to ship it, and there would be no come back; when he had his money it was his.

Q. It was a benefit to him?

A. It was a benefit to him, yes.

Q. Did you overhaul any other damaged shipments during last fall, 1913?

A. That is a question which the judge just asked, and I explained that this cargo was reconditioned. I have overhauled—

Q. You stated in answer to my question that you had not overhauled shipments? You mean that you did not overhaul any damaged shipments?

A. I corrected that a minute ago, I stated that I had Libby's. I had forgotten that.

Q. Did you overhaul any undamaged Alaska shipments during the fall and winter of 1912 and spring of 1913?

A. Only for the labeling, putting on proper labels necessary to go out to the trade.

Q. Nothing except for labeling?

(Testimony of W. H. Horner.)

A. That is all. I did not overhaul anything for swells or for conditions.

Q. Did not overhaul any shipments or rebox any shipments? [218]

A. Oh, I had a few small shipments, may be fifty or seventy-five cases, something of that kind at different times for the Alaska Steamship Company or the Pacific Coast, damaged by a little water, the breaking of a pipe or something like that.

Q. Any undamaged shipments is what I am trying to get at.

A. No, I did not overhaul any undamaged shipments for conditions, only overhauled for labeling.

Q. That is your regular business, is it not, Mr. Horner? A. Yes, sir.

Q. And you are fairly busy at it most of the time?

A. I think I had two days off in the last year and a half.

Q. Most of your work is on damage to small shipments?

A. No, sir, most of my work is looking after the general shipping of salmon, labeling, relabeling, stripping and marking and inspecting.

Q. In these shipments on the Alaska Steamship Company and the Pacific Coast, where there were a few cases damaged were these from very small shipments of salmon?

A. No, they were shipments running from four to ten or fifteen thousand cases.

Q. But approximately how many cases in these shipments did you overhaul or recondition?

(Testimony of W. H. Horner.)

A. Sometimes twenty-five or thirty, sometimes as high as seventy-five.

Q. In order to get at these twenty-five or thirty or seventy-five, would you overhaul the entire fifteen thousand cases?

A. No. I would receive notice from the Alaska Steamship Company or the Pacific Coast Company that they had so [219] many cases.

Q. You paid no attention to the balance of the shipment?

A. They had so many damaged cases to condition. I would say, where is the damaged stuff and I would put it in shape and that was the end of it.

Q. Not necessary to go through the entire fifteen thousand cases?

A. If I was on the dock and saw damaged stuff, I would pull out and call attention to protect the warehouse people, and make a notation and settle with the steamship company any damage in that parcel.

Q. You received no express authority from the owners of the "Jeanie" or the charterers of the "Jeanie," to overhaul this entire 29,000 cases, did you?

A. The only thing I received was the sanction of all parties that it was agreeable for me to overhaul the cargo.

Q. At a time that there was some 2,000 or 2200 cases damaged on the dock? A. Yes.

Q. And the balance was in the warehouse, reported good cases? Supposed to be good cases?

(Testimony of W. H. Horner.)

Q. (Mr. HANFORD.) Mr. Horner, when you were doing this work or when it was finished, were the cases which had been reconditioned segregated and kept separate from those which on inspection were found to be undamaged?

A. How is that, Judge?

Q. I want to know when your work was completed whether the cases which you reconditioned were mingled with those [220] which you had found undamaged, or whether they were segregated and kept separate from the balance.

A. They were kept separate. The cans we found were cased up and put in piles by themselves. The stuff was reconditioned and marked and put in separate piles, the different brands were kept separate, so that we could determine the piles and the different brands.

Q. Now, have you any knowledge with respect to the disposition of this lot of salmon, as to whether those which were reconditioned were sold as first-class goods the same as the undamaged, or differently?

A. No, sir, they were all sold as first-class goods, at the market price. No exception made whatsoever against them.

Q. In what way did you obtain that information?

A. By seeing some of the orders or sales sheets. I happened to have a desk in the office of the brokerage firm that handles these goods, and have been there for nine years, Kelley-Clark Company.

Q. If you kept the reconditioned salmon separate

(Testimony of W. H. Horner.)

could not you give us some idea of the exact number of cases that were reconditioned, out of the ones you found good, or is that the 4088?

A. Here is a typewritten list. That sheet shows how many of each brand, there is a complete list. The difference between the original amount and this is the amount we put back as good as they were.

Q. In using the word recondition, you refer to the salmon your bill shows were overhauled? [221]

A. Yes, we overhauled them to find out what the damage was in order to get them ready for shipment by the broker to the trade.

(Witness excused.) [222]

Seattle, Wash., June 30, 1914.

Continuation of proceedings pursuant to agreement of proctors.

Present: Judge C. H. HANFORD and Mr.
J. A. KERR (of Messrs. KERR &
McCORD), Proctors for Libelant,
Mr. LAWRENCE BOGLE (of Messrs.
BOGLE, GRAVES, MERRITT &
BOGLE), Proctor for Respondent and
Claimant.

Claimant's Testimony.

[Testimony of P. H. Karbbe, for Claimant.]

P. H. KARBBE, produced as a witness on behalf of claimant, having been first duly sworn, testified as follows:

Q. (Mr. BOGLE.) State your name, age and residence?

A. P. H. Karbbe, sir.

(Testimony of P. H. Karbbe.)

Q. And age? A. Forty-five years old.

Q. And you reside in Seattle? A. Yes.

Q. What is your business?

A. I follow the sea for a living.

Q. How long have you been a seafaring man?

A. Since 1882.

Q. You hold a master's license, do you?

A. Yes, sir.

Q. How long have you held that license?

A. I have held that since 1898.

Q. Were you the master of the steamship "Jeanie" on her [223] voyage to Alaska and return, commencing somewhere about December, 1912, and ending January 8th, 1913? A. Yes, sir.

Q. Captain, on your voyage from Seattle to Alaska, I wish you would state in a general way what cargo you had aboard.

A. Well, sir, we had coal, dynamite, oil and general merchandise.

Q. What was the nature of this coal, sacked or in bulk? A. No, in bulk.

Q. Where was this coal loaded?

A. It was loaded at Nanaimo, that is, in—well, just above Nanaimo.

Q. Well, I mean what portion of the "Jeanie?"

A. It was loaded in all the hatches we had, that is, 1, 2 and 3.

Q. And what portions of the ship itself, on what decks?

A. Well, that is in the lower hold and part 'tween deck in No. 1 and 2.

(Testimony of P. H. Karbbe.)

Q. No. 1 and 2; those are forward holds, are they?

A. Yes, sir.

Q. Is the "Jeanie" an iron or wooden vessel?

A. She is a wood vessel.

Q. Or was she, rather. How long had you been on the "Jeanie" prior to this voyage?

A. I had been on the "Jeanie" since—I joined her sometime in June; I could not say.

Q. June, 1912? A. Yes.

Q. What condition was the "Jeanie" in at the time she started [224] on her voyage at this time?

A. Good condition, as far as I know.

Q. Do you know when she was last on drydock?

A. She was on drydock in July some time, I think

Q. 1912? A. 1912.

Q. Do you know what repairs were made on her at that time?

A. No, sir, I don't. She was fixed up as near as they could; I believe she was calked and—

Q. (Interrupting.) After she was on drydock in July, do you know whether or not her decks were calked or was there any work done on her?

A. Yes, in August or September, I think it was in September they sent two calkers over to Tacoma to fill her soft spots and then calk them; but I could not say what month.

Q. August or September, 1912, you think?

A. Yes.

Q. Prior to this voyage? A. Prior, yes, sir.

Q. Captain, what was your first port of call after leaving Seattle on your north bound voyage?

(Testimony of P. H. Karbbe.)

A. Well, I sailed from the dynamite place up here.

Q. I see. A. What do you call it?

Q. Dupont?

A. Dupont. I sailed from here to Dupont and from Dupont to Ketchikan.

Q. Well, now, captain, on your voyage from Seattle to Ketchikan, what kind of weather did you find?

A. We had bad weather going north. I had to heave to eight [225] hours on Charlotte Sound, to save the deckload.

Q. Was the "Jeanie" taking any water at that time, on the northbound voyage?

A. She was taking some water all the time when I was with her; I never saw any difference.

Q. She always takes a little water, does she?

A. Yes.

Q. Was the water in such quantities that her pumps were or were not able to handle it?

A. No, sir, not while I was aboard her.

Q. You mean that her pumps could handle it?

A. Yes, sir, easy.

Q. Captain, when you arrived what cargo did you discharge there?

A. Just discharged a little general merchandise.

Q. And from there you proceeded north?

A. No, sir, then I went to Bonanza Cove; then up to that Jap place, and then I went to Wrangell—

Q. (Interrupting.) Now, going through Wrangell, did you at any time touch bottom?

A. Yes, sir.

(Testimony of P. H. Karbbe.)

Q. I wish you would just state the circumstances in connection with that?

A. Well, I got by what they call Finger Point, and looked all right, and in a few minutes she started in—hit a snowstorm, and I slowed her down and stopped her and we laid still. I told the man, I says, “Throw your lead overboard.” It was muddy bottom. And we got some three fathom of water, and I let go of the anchor and stayed until morning.
[226]

Q. What is the width of the channel at that place?

A. Well, it is about—perhaps it is—perhaps it is 200 feet.

Q. Do you remember what time of day it was that you let go your anchor in Wrangell Narrows?

A. Somewhere around five o'clock, sir; I could not say what time; somewhere around five.

Q. And were you at that time resting on the bottom?

A. No, sir, she just—you know she just dragged that way, but I didn't know what side I was on of the channel.

Q. When did she touch bottom?

A. She never touched bottom—she never touched bottom until I let go of the anchor and the tide dropped her aft, then she touched bottom, I should judge about—well, about somewhere after five. Of course this was loose mud, you know, and that would kind of drift away with the tide, you know, until she got hold solid. I should judge somewhere about half-past five.

(Testimony of P. H. Karbbe.)

Q. Then you remained there until the next morning?
A. Yes, sir.

Q. And how did you get out?

A. Well, I ran a kedgie anchor out that night and pulled her taut so as to be ready the next morning; then I sent a boat out to hunt up the buoy—there is a black buoy on Green Point—and put a light on there so that I could see the next morning what to do.

Q. Captain, what was the nature of the bottom of the place you were?
A. Muddy bottom.

Q. Did you get off some time the next morning?

A. Yes, sir. [227]

Q. And proceed on your voyage?
A. Yes, sir.

Q. When did you arrive at Juneau? That was your next stop, wasn't it?

A. I think we arrived there somewhere—I could not say for sure, but I arrived there about the 16th—15th or 16th.

Q. Of December?
A. December, yes.

Q. Did you make any report of the fact that you had been stranded?

A. Yes, sir, I reported to the inspector, George Whitney.

Q. Do you know whether or not he made any examination of the "Jeanie"?

A. Well, sir, I believe he was down there. There was no inspection that he could make. Of course the ship was seaworthy. She was as good as she was when she left Seattle.

Q. After you reported this fact to him, did you

(Testimony of P. H. Karbbe.)

receive any authority from him?

A. He told me, "That is all right, go ahead."

Q. Captain, from the time you got off this muddy bottom in Wrangell, up to the time that you arrived at Juneau, did you sound your pumps or take any precautions to find out whether any damage had been done or whether or not she was leaking?

A. Yes, sir, I instructed the mate to sound her bilges, you know. The report came to me that she was just the same as she was before—no water—that is, only usual of course. [228]

Q. What cargo did you unload at Juneau?

A. Well, I had some general merchandise, hay and stuff, and then I had coal. I forget how many tons, it is quite a while ago.

Q. What was your next port of call, Captain?

A. From Juneau we went to Chilkoot.

Q. Now, Captain, where did you get your instructions to go to Chilkoot, before you left Seattle?

A. I had no instructions; I used my own judgment in the matter.

Q. I mean who instructed you to go to Chilkoot?

A. Myself. I had instructions to go to Chilkoot, Yes Bay and Chomly for 32,000 cases of salmon.

Q. That is what I mean, Captain. When did you receive those instructions?

A. In Juneau, by telephone.

Q. Now, Captain, when you arrived at Chilkoot, did you take some salmon aboard there?

A. Yes, sir, 10,000 cases more or less; I forget now how many it was.

(Testimony of P. H. Karbbe.)

Q. Where did you load that salmon on the "Jeanie"? A. Loaded it in No. 1 hold, sir.

Q. Where is No. 1 hold on the "Jeanie"?

A. That is the forward end of her.

Q. Had any coal been previously loaded in No. 1 hold? A. Yes, sir.

Q. Where was that coal unloaded?

A. In Juneau.

Q. And after the coal was unloaded, what did you do with reference to cleaning out those holds? [229]

A. Well, sir, there was every precaution taken. I told the mate to sweep up forward two or three times, because the dust flies around, and then sweep again and you get a little more.

Q. Did you have charge of loading the cargo?

A. No, sir.

Q. Do you know how it was dunnaged?

A. No, only I gave instructions how to dunnage it.

Q. What instructions?

A. Well, I told the mate to put four inches of dunnage in No. 1 hold.

Mr. KERR.—Don't tell what you told the mate.

Mr. BOGLE.—I think that is probably not material. I am going to call the mate, anyway, Mr. Kerr.

Q. (Mr. BOGLE.) You have no actual knowledge as to how this cargo was dunnaged?

A. No, that I have not.

Q. When did you leave Chilkoot—what was the next port of call?

A. The next port of call was Gypsum.

(Testimony of P. H. Karbbe.)

Q. On the voyage from Chilkoot to Gypsum, what was the nature of the weather you encountered?

A. Well, sir, it was nasty, dirty weather; southeast, strong, blowing about thirty miles an hour, I should judge.

Q. Did you take any seas over the vessel-

A. No, sir; might a little spray once in a while.

Q. Did you discharge any cargo at Gypsum?

A. No, sir.

Q. Why was that, Captain?

A. Well, there was a barge. I came there eleven o'clock [230] at night and it was dark and snow squall, southeast or southwest snow squalls, and there was a barge alongside of the dock, and I laid there until in the morning, in daylight, about 7:30 or eight o'clock I steamed in and I asked him if he would let me lay alongside of the barge and discharge what coal I had for there. He says, "No, you have to tow the barge out." Well, I didn't have the power in the ship to tow any barge out in that weather.

Q. So you did not discharge any cargo at Gypsum? A. No.

Q. What was your next port?

A. I laid until eleven o'clock, thinking that the weather would moderate and I would go in and do that work, but it didn't moderate, so I proceeded to Sitka.

Q. What was the nature of the weather encountered on the way from Gypsum to Sitka?

A. It was not very bad. It was, perhaps, twenty-

(Testimony of P. H. Karbbe.)

five or thirty-mile weather—heavy snow squalls, though, snowing heavy.

Q. No worse than the weather you usually expect to encounter in that time of the year? A. Oh, no.

Q. What cargo did you discharge at Sitka?

A. I discharged coal.

Q. Do you remember where that coal was taken from?

A. Yes, sir, it was taken, I think, from No. 2—No. 1, No. 2 and I think No. 3, I am not positive.

Q. Captain, when this coal was being discharged, did you take any precautions to protect the salmon that was on board? [231]

A. Yes, sir, we tacked up all around—tacked up canvas; we put canvas up and then put battens on, you know, and tacked the canvas up against the sides, so that the coal-dust could not get in. Of course, it will more or less, anyway.

Q. Where did you proceed after leaving Sitka?

A. I went to Sulzer—I tried to go to Sulzer, but it was blowing so hard I could not make it; I had to turn back.

Q. What was the nature of the weather you encountered on the voyage from Sitka to Sulzer?

A. Southeast gale with a strong southwest swell.

Q. And what was the strength of the wind?

A. Well, I should judge about forty miles an hour.

Q. (Mr. KERR.) How much?

A. Forty miles an hour.

Q. (Mr. BOGLE.) How was the sea, Captain?

A. Oh, the sea was enormous, these cross-seas,

(Testimony of P. H. Karbbe.)

across from the southeast, southwest and westerly swells, they just came up and they just—oh, I never saw anything like it.

Q. How did the vessel act in that sea?

A. She acted good, but no vessel could act good in a sea like that and cross it all, you know.

Q. Did she roll any?

A. Oh, God! roll! yes. I never saw any worse in all my work at sea.

Q. Did she take any water over her deck?

A. Yes, she took it clean all over.

Q. How long were you in that sea trying to make Sulzer?

A. Well, I left Sitka in the morning and I turned around eleven o'clock that night to go inside—no, about ten [232] o'clock, about half-past nine, ten o'clock. I got inside at eleven o'clock, somewhere around eleven.

Q. Were you in this sea during all that time?

A. Yes, sir. No, not in this—that is, it was not as bad, you know, during the day, but towards evening, you know, it was worse.

Q. You say you went inside? A. Yes, sir.

Q. What was the purpose of that, Captain?

A. Well, I tried to save the ship and cargo.

Q. Did you make any further attempt to get to Sulzer?

A. Yes, I went inside, started inside for Clarence Strait, but that was the day after.

Q. Did you finally reach Sulzer?

A. No, sir, I had to turn back—a forty-mile gale,

(Testimony of P. H. Karbbe.)

I guess, and the ship would not make no headway, and I knew if I ever started for there I could not do nothing with her, so I turned and went to Ketchikan.

Q. How long were you in this sea, Captain, the second time?

A. Well, I was not in this sea long; I only tried about three hours on that.

Q. Was the ship taking any water during those three hours, Captain?

A. Yes, she was taking quite a little.

Q. And how was she acting—

A. (Interrupting.) I mean over—I am not speaking about what she leaks—

Q. (Interrupting.) Over her deck? A. Yes.

Q. Now, how did she act in this sea, Captain? [233]

A. She acted all right; she was a good sea boat; she was a good ship.

Q. I mean as to rolling?

A. No, there was no roll; right head to, you know.

Q. A head sea? A. A head sea, yes.

Q. Then where did you go?

A. I went to Ketchikan and sold the coal there.

Q. Did you discharge the balance of your coal at Ketchikan? A. Yes, sir.

Q. Captain, during this sea that you encountered trying to reach Sulzer, was that the ordinary sea that you would expect to encounter at that time of the year?

A. Oh, no, sir. No, that was beyond that. I

(Testimony of P. H. Karbbe.)

would not have gone that way.

Q. The "Jeanie" being a wooden vessel, would she strain any in a sea of that kind?

A. Oh, yes. Oh God! yes. Any ship would; an iron ship would.

Q. During that time was the "Jeanie" taking any more water—I don't mean over her decks, but in the vessel herself?

A. No, sir; that is, I never was notified—no more than what she usually did in all the time I was in her.

Q. Her pumps were—

A. (Interrupting.) Oh, you mean the time when—the night of the heavy gale when I turned around?

Q. The night you were trying to reach Sulzer?

A. Yes, of course, with that heavy straining she took more water.

Q. Were you operating the pumps all the time, Captain? [234] A. Yes, sir.

Q. Were you able to take care of the water all right? A. Yes, sir, we pumped every hour.

Q. When you arrived at Ketchikan and discharged your coal, where did you proceed next?

A. We went to Yes Bay. Well, we stayed there that night and cleaned the holds, you know. After I got the coal discharged, why, we stayed and we worked all night cleaning the holds and fixing up for salmon. We were going to get some salmon at Yes Bay.

Q. What did you do with reference to cleaning the holds?

(Testimony of P. H. Karbbe.)

A. Well, we swept them thoroughly and then swept them again, swept them two or three times—always when we have coal. The dust floats around and then it settles again and then when you sweep it again you get a little more of it.

Q. Then you proceeded to Yes Bay, did you?

A. Yes, sir.

Q. Took on how much salmon there, Captain?

A. Well, I could not say. I think we took on—

Q. (Interrupting.) Just approximately? I think the record admits the amount.

A. Fifteen thousand or something, or thirteen thousand something.

Q. Then where did you go?

A. Then we went from there into Bonanza Cove.

Q. And afterwards to Chomley?

A. Afterwards to Chomley.

Q. Do you remember where the salmon from Yes Bay and Chomley was loaded aboard the ship?

A. No. [235]

Q. You didn't have to do with that?

A. Well, I had to do with it, but then I went to bed.

Q. The duty of stowing the cargo was with the first officer—the officer's duty? A. Yes, it was.

Q. Then you returned to Ketchikan and sailed on the southbound voyage? A. Yes, sir.

Q. Do you remember when you left Ketchikan?

A. I left Ketchikan I think on the 3d of January; I am not sure; I would not say this for positive fact; it is a long time ago.

(Testimony of P. H. Karbbe.)

Q. Yes. Captain, after leaving Ketchikan, what weather did you encounter on your southbound voyage? A. It was all bad weather, sir, and snow.

Q. Was it the weather that you would, from your experience, anticipate encountering at that time of the year? A. No, sir; I never saw it before.

Q. Where did you strike the worst of the weather, Captain?

A. After I got by—after I got through Seymour Narrows, that is the worst part of it.

Q. What was the nature of the weather you struck there?

A. Well, I struck a—oh, I should judge about a sixty-mile gale, with snow, and we went through the Narrows somewhere around 3:30 I think in the afternoon and at eleven o'clock next day I had made about thirty miles, going full speed.

Q. From eleven o'clock one day until—

A. (Interrupting.) No—

Q. Three o'clock one day until eleven the next?

[236] A. Yes.

Q. How was the sea during this heavy weather?

A. Oh, *it an* awful sea, terrible sea.

Q. Did the vessel roll or strain any?

A. Well, she strained all the time, naturally. She had a big, heavy load, you know.

Q. Was she taking any water over her decks?

A. Yes, she was filling her decks all the time.

Q. During what portion of the time was she taking water?

A. Well, she was taking water—you mean from

(Testimony of P. H. Karbbe.)

the time we left Seymour Narrows?

Q. Yes.

A. All the time, that is, from Cape Mudge to about the—well, about say—we will say eight o'clock the next morning.

Q. How much water were you taking over your decks—a small amount?

A. No, sir, a large amount.

Q. Were the big seas shipped right over your—

A. (Interrupting.) Yes, quite big seas.

Q. Did you have any trouble handling your ship during this weather?

A. No. Well, she just had steerage way, that is all; I could just steer her, that is all.

Q. Do you remember when you arrived in Seattle?

A. I think it was on the 8th; I am not sure.

Q. What is your usual voyage on the "Jeanie" from Ketchikan to Seattle?

A. About seventy-six to eighty hours.

Q. This was an unusually long voyage, then?

[237] A. Yes, sir.

Q. What was the cause of that?

A. Well, it was the heavy weather.

Q. During this heavy weather which you encountered coming down, were you able to take care of the water with your pumps? A. Yes, sir.

Q. Was she taking an unusual amount of water?

A. Well, she was taking more, you know, than she used to, and then the pump broke down, but we fixed it up so that we could work one; that is all I wanted—all I needed.

(Testimony of P. H. Karbbe.)

Q. Was your vessel in any danger of foundering at any time? A. No, sir.

Q. Do you know approximately how long your was in this heavy weather?

A. Well, it was all heavy weather, all heavy weather.

Q. Five days?

A. Well, you know it was all pretty nasty, it was blowing strong, but she was not taking any seas or anything. The worst weather we had was from Cape Mudge and up to say eight o'clock that morning. I forget what time we were opposite Cape Mudge, but it says in the report.

Q. Captain, how long have you been engaged in making voyages to and from Alaska?

A. Since 1897.

Q. Was this voyage of the "Jeanie" an unusually rough voyage?

A. Yes, sir, I never seen the beat of it.

Q. During that time? [238] A. No, sir.

Q. Were you on watch when the vessel arrived in Seattle? A. Yes, sir; I am always on watch.

Q. I mean were you on deck at the time they started to unload the cargo?

A. No, sir. I went home. I was sick.

Q. Do you know anything about the damage to this cargo?

A. No, sir, nothing was ever reported to me, not a thing.

Q. Nothing was ever reported to you?

A. No, sir, nothing.

(Testimony of P. H. Karbbe.)

Q. Was any claim ever made against you or filed with you as master of this vessel?

A. No, sir, nothing was said to me at all, not a thing.

Q. Captain, do you know how these hatches were secured, covered?

A. Yes, sir; they were calked and three tarpaulins on each hatch.

Q. When were they calked?

A. They were calked in Chomley, that is, when we finished they were calked, when we went to sea.

Q. Was the forward hatch secured in the same way when you left Chilkoot? A. Yes, sir.

Q. Have you had any experience in loading cargo on Alaska vessels? A. Yes, sir, quite a little.

Q. In your opinion, captain, were these hatches properly secured? A. Yes, sir.

Q. (Continuing.) For the weather expected to be encountered [239] at that time of year?

A. Yes, sir; could not be no better.

Q. Captain, in your experience in navigating Alaska waters, I will ask you whether it is unusual for a vessel to lay in Wrangell Narrows and touch bottom there? A. Beg pardon?

Q. Whether it is anything unusual for a vessel to touch bottom in Wrangell Narrows?

A. No, sir. I have touched bottom lots of times in Wrangell Narrows.

Q. Did you ever sustain any damage?

A. Yes. Not at Green Point, though.

Q. You touched what kind of bottom when you sustained damage?

(Testimony of P. H. Karbbe.)

A. Well, we touched rock then.

Q. Rock? A. Yes.

Q. You say this was mud bottom where you touched? A. Yes.

Q. Did you ever sustain damage from touching there when there was mud bottom?

A. Well, I never touched at Green Point before.

Q. Are you sure that was mud bottom there?

A. Yes. The ship sunk down over four feet in the mud.

Mr. BOGLE.—I do not think it is proper for me to offer the protest as a part of our case. If there is no objection, I will offer it. If there is, of course, I will have to withdraw it. Merely for the purpose of showing the entries in the log-book.

Mr. KERR.—Well, the protest is not complete anyway. I [240] don't want to—

Mr. BOGLE. (Interrupting.) The only purpose of it is showing the entries in the log-book.

Mr. KERR.—Well, wait until I finish my cross-examination before you ask him.

Mr. BOGLE.—All right.

Cross-examination.

Q. (Mr. KERR.) Captain, how much coal did you have for the various ports in Alaska?

A. Beg pardon?

(Question read.)

A. Oh, that is—I can't tell you that.

Q. Approximately how many tons?

A. I think I had between five and six hundred tons, I am not sure. That is beyond me, anyway.

(Testimony of P. H. Karbbe.)

Q. The "Jennie" has a small 'tween decks?

A. No, sir. That is the upper deck we call it. She has a large 'tween deck.

Q. She has what?

A. A large 'tween deck, and then she has a little bit of a deck there.

Q. That is the orlop deck, isn't it?

A. No, the 'tween deck would be the orlop deck, and this other deck is just about the height of this table from the floor.

Q. For what points did you have coal?

A. We had coal for Juneau and Gypsum, Sulzer and Sitka. [241]

Q. You did not deliver any coal at Gypsum or Sulzer? A. No, sir.

Q. Neither of those places? A. No, sir.

Q. You did deliver coal at Sitka and you took that out of the forward hatch?

A. Well, sir, I think I took it out of—yes, it is No. 1 or No. 2 and No. 3 also I think.

Q. Did you take it all out of the forward hatch at Gypsum—or at Sitka?

A. No, sir, I don't think I did; no, sir.

Q. You don't think you did. Then you did not unload any more coal until you got back to Ketchikan? A. No, sir.

Q. Then you put the salmon that you took over at Chilkoot in the forward hatch with the coal?

A. No, sir, not with the coal at all. It was perhaps the width of this room from the coal.

Q. Well, you put it in the forward hold then?

(Testimony of P. H. Karbbe.)

A. Yes.

Q. Where the coal was? A. Yes, sir.

Q. In bulk? A. Yes, sir.

Q. Were you down in the forward hold after they took whatever coal was taken out of it—

A. (Interrupting.) No, sir.

Q. Wait until I finish the question, Captain. After whatever coal was taken out of it at Sitka before you arrived at Chilkoot— [242]

A. (Interrupting.) Well—

Q. You did not go down in there at all, that was not any of your business, was it?

A. It is my business, you know, but I was not down there.

Q. You were not down there at all? A. No, sir.

Q. Were you down in the hold while the vessel laid at Chilkoot? A. No, sir.

Q. That was not any of your business to go down there?

A. Yes, it is my business, but I was not down there.

Q. You were not down. When was the coal taken out of the forward hold? A. In Juneau.

Q. On your way down? A. On my way up.

Q. When was the balance of it taken out? Not until you arrived back at Ketchikan, was it?

A. No, not until I arrived back at Ketchikan.

Q. Now, if all the boxes of the salmon that were loaded at Chilkoot were found full of coal-dust when they arrived here at the dock, to such an extent that they all had to be overhauled, they got that in the hold of your vessel, didn't they? A. Yes, sir.

(Testimony of P. H. Karbbe.)

Mr. BOGLE.—I object to that as not based upon testimony in this case.

Q. (Mr. KERR.) That is where they got it—in the hold of that vessel?

A. They must have. [243]

Q. They must have gotten it that way. And if a lot of this salmon that was brought down on that voyage was discolored, the labels all discolored and the cans all rusty from water, they got the water from the hold of that vessel, didn't they?

A. Well, they could not have got it anywhere else.

Q. They could not have gotten it anywhere else. Now, I understand you had no particular stress of weather until you arrived at Chilkoot?

A. No, sir, not until we arrived in Chilkoot. Yes, I had eight hours hove to in stress of weather—when we hove the ship to.

Q. What time did you arrive at Wrangell Narrows, going up?

A. I think I arrived there about the 12th or 13th.

Q. Of December? A. Of December.

Q. What time of the day did you enter Wrangell Narrows?

A. I think I entered there somewhere around three o'clock. I am not sure.

Q. I want you to be just as sure now as you can.

A. I am not sure. Then I won't say nothing, because I ain't sure.

Q. Your best judgment is that you entered Wrangell Narrows about three o'clock on what date?

A. Well, I could not tell you the date, either.

(Testimony of P. H. Karbbe.)

Q. Well, you said a minute ago you thought it was the 13th, didn't you?

A. Well, I think so, yes; I am not positive.

Q. That is three o'clock in the afternoon. Is that right?

A. That is right, somewhere around there, I could not say [244] which.

Q. Of December 13th. What time did you go to anchor on December 13th?

A. Well, I went to anchor somewhere around five o'clock; I could not say.

Q. Five P. M. of the 13th in Wrangell Narrows; at what point? A. Green Point.

Q. What point? A. Green Point—Green.

Q. Gray? A. Yes—Green.

Q. How far up the Narrows is Green Point?

A. Well, it is about twelve miles, I should judge—twelve or thirteen miles.

Q. You came to anchor because you struck the bottom, did you not?

A. No, sir, I didn't strike bottom.

Q. What did you go to anchor for?

A. Because I was afraid of drifting on the bottom and may injure the ship.

Q. Which way was the tide running?

A. The tide at that time was about—a little after slack water; there was hardly any tide.

Q. Low or high? A. High.

Q. Why did you stop in the Narrows at slack water, high water?

A. Because it was snowing and dark; I could not

(Testimony of P. H. Karbbe.)

see where I was at.

Q. What time did you get off the next day? [245]

A. Somewhere around five o'clock in the morning; I can't tell exactly, but that is—

Q. (Interrupting.) What was the stage of the tide then?

A. High water, sir, the same tide as it was—

Q. (Interrupting.) Five A. M. on the 14th?

A. Yes, sir.

Q. Did you have a long run-in of the tide that night, or short?

A. Well, that I could not tell you.

Q. You don't know whether that was the long run-out during the night or not? A. No, sir, I don't.

Q. What is your best judgment on it?

A. Well, it is a short run-out.

Q. You think it was a short run-out?

A. It was small tides.

Q. How much tide, in your judgment?

A. Well, it was I think eight foot six, was the tide in the almanac.

Q. And you struck at high water, so that the tide went out eight feet six inches?

A. No, about four feet or like that. Perhaps it was four feet low water slack.

Q. Do you think the fall would be about four feet?

A. Well, it would be over that, you see, it would be about twelve feet, but then what I mean it would be four foot low water slack.

Q. Well, if you were in there at high water, what would be the fall—the extreme fall of the tide during that night? [246]

(Testimony of P. H. Karbbe.)

A. Well, I should judge—well, say eight feet.

Q. Eight feet. How much water does the “Jeanie” draw? A. She drew twenty foot six, I think.

Q. There were about three fathoms of water when you dropped your anchor?

A. Yes, somewhere around there.

Q. That is 18 feet? A. Yes.

Q. No wonder she got four feet in the mud, when the tide dropped eight feet, was there?

A. No, of course there was no wonder.

Q. There would only be 12 feet of water where she was lying and she drew 20 feet, didn't she?

A. Yes.

Q. The most of Wrangell Narrows is rocky, isn't it? A. You bet.

Q. From one end to the other?

A. Yes. Not one end to the other; there is lots of rocky bottom, though.

Q. Well, it is nearly all rock all the way, and crooked? A. Yes, and crooked.

Q. The channel is rocky almost every foot of the way, isn't it? A. Oh, no, no.

Q. What?

A. There is lots of muddy bottom in Wrangell Narrows.

Q. Where is Green Point from where the old salt-ery used to be on the Narrows, on the right hand side as you go up, where the old wreck laid for so long?

A. Well, it is about—oh, I should judge about eight miles [247] from there.

Q. Below or above? A. About six miles.

(Testimony of P. H. Karbbe.)

Q. Below? A. Above.

Q. Above, above there. It was above there?

A. You remember where Tongas cannery is?

Q. Yes, I remember where the Tongas cannery is.

A. It is about a mile this side of Tongas cannery.

Q. Now, how wide is the Narrows at that point?

A. Well, I could not tell you that. We will say—
I will give you 200 feet.

Q. 200 feet; at high tide? A. At high tide.

Q. How wide at low tide?

A. Oh, well, I don't know about low tide.

Q. How?

A. That is beyond me, I could not tell you that.

Q. Is the channel there straight or crooked?

A. It is pretty straight.

Q. And how far were you from Petersburg?

A. Well, I don't know—oh, I should judge about
eight miles.

Q. You had in the vessel, when she lay there for
from five o'clock—or three o'clock on the 13th until
5 A. M. of the 14th, at least 600 tons of coal, and how
many tons of other freight?

A. Oh, we had some dynamite and we had pil and
we had all kinds of stuff, you know.

Q. A full cargo? [248]

A. Full cargo.

Q. What is her tonnage?

A. Well, her tonnage is somewhere around 800,
somewhere about 800 tons.

Q. Do you know how many years old the "Jeanie"
was?

(Testimony of P. H. Karbbe.)

A. Somewhere around twenty-one or twenty-two years, I guess.

Q. Now, Captain, you testified that the "Jeanie" was on the drydock in July. Do you know anything about that personally? Did you see her on any drydock? A. Yes, sir.

Q. You saw her there yourself? A. Yes, sir.

Q. Did you see her being calked?

A. No, sir.

Mr. BOGLE.—I don't think he testified she was calked then. I just asked him if she was on the drydock.

Mr. KERR.—I think he testified. He said she was calked in September.

Q. (Mr. Kerr.) Did you see her calked?

A. I saw her decks calked, yes, sir, somewhere around September—part of her decks.

Q. You saw two calkers working on her decks in September?

A. Yes. Well, I don't say whether it was August or September.

Q. Well, August or September. Where was that, Captain?

A. That was going from here to Tacoma and back and while we were in Seattle and also while we were laying in Tacoma.

Q. How long did these two men work on the decks of the "Jeanie"? [249]

A. I don't know about that part of it.

Q. How long did you know of their working on the decks of the "Jeanie" calking?

(Testimony of P. H. Karbbe.)

A. I could not say.

Q. How? A. I don't know.

Q. How long did you know of their working on the decks—two men?

A. I don't know. I was pilot, you know. I went ashore, I went home.

Q. Well, how long did that trip consume when you say these two men were aboard calking the decks?

A. Oh, I should judge about three or four days.

Q. Three or four days. Two men could not calk the decks of the "Jeanie" in three or four days?

A. No, they just calked the soft spots, you know, just the soft spots.

Q. You don't think that this vessel, with a full cargo, drawing 20 odd feet of water and lying in 12 feet of water a part of a night, would open up any of her seams, do you? A. No, sir.

Q. Her deck seams? A. No, not a thing.

Q. It would not? A. No, sir.

Q. Captain, how long had these tarpaulins been aboard the vessels? A. I don't know, sir.

Q. They were old, weren't they? [250]

A. They were—

Q. (Interrupting.) They were torn?

A. No, I would not say that; but there was some old; there was one brand new hatch—

Q. (Interrupting.) What hatch did you have that on, that new one?

A. They were all new, on all four hatches, one tarpaulin—that is, I am not saying new, but I am saying they were new that spring.

(Testimony of P. H. Karbbe.)

Q. Captain, after you left Chilkoot did you ever have that hatch open until you got to Katchikan?

A. No, sir.

Q. Was it open at Katchikan?

A. Chilkoot until I got to Katchikan? Sure I had to open it in Sitka.

Q. You went from Juneau to Chilkoot and then to Sitka? A. Yes, sir.

Q. Had you delivered any coal at all when you took this cargo on at Chilkoot?

A. I had delivered coal in Juneau to get space.

Q. How much?

A. Well, that I don't know. I had to deliver coal enough to get space for the salmon.

Q. So that you put that off at Juneau?

A. Yes, sir.

Q. From what part of the vessel—you discharged some cargo at Ketchikan northbound, didn't you?

A. Yes, sir.

Q. Where did you take that from?

A. Well, I don't know. From one of the hatches, that is all [251] I know.

Q. How much did you discharge?

A. Oh, not an awful lot; we never had very much. Just general cargo, whatever it was.

Q. Did you yourself make any soundings in Seymour Narrows? A. In Seymour Narrows?

Q. Did you yourself make any soundings in Seymour Narrows?

A. No, sir, I never sound in Seymour Narrows.

(Testimony of P. H. Karbbe.)

Q. All you know about the bottom is what somebody told you?

A. I never sound in my life in Seymour Narrows.

Q. I mean Wrangell Narrows.

A. Yes, that was by myself.

Q. You handled the lead yourself? A. Yes.

Q. All around the ship?

A. All around the ship.

Q. And one depth of water all around the ship?

A. And one depth of water all around, sir.

Q. Were you moored out in the channel?

A. No, sir; we were stuck in the mud.

Q. You say there was an inspector came aboard the vessel at Juneau? A. I did not.

Q. Didn't come aboard at all?

A. I didn't say that at all. I said I spoke to the inspector.

Q. He never came on the vessel at all?

A. That I don't know anything about.

Q. He never came aboard the vessel to your knowledge?

A. I don't know nothing about that [252]

Q. You didn't have her inspected, as far as you know? A. No, did not.

Q. Did you use your pumps going north at all?

A. Well, yes, we used them that night we were hove to in that heavy gale.

Q. Where was that?

A. In Queen Charlotte Sound.

Q. Did you use them after that at all?

A. No. No need of it.

(Testimony of P. H. Karbbe.)

Q. Did the ship carry any dunnage at all?

A. Oh, yes; carried about 40,000 feet of dunnage—about 20,000 feet of dunnage we carried.

Q. What did you do with that dunnage when you had your coal in the ship?

A. Well, piled it up on the sides, you know. Then the coal comes up against it.

Q. Have any dunnage in the forward hold?

A. Yes, lots of it.

Q. What did it consist of?

A. Well, consisted of two-inch planks and three-inch planks, four-inch planks.

Q. Now, you put that dunnage between the cargo of salmon and the outer skin of the vessel to protect the canned salmon from wash on account of the roll of the ship, don't you? A. Generally do, yes.

Q. And you do that effectually; even if there is water in the bilge and it washes up inside of the skin of the ship, it don't damage the cargo?

A. Well, that I don't know. [253]

Q. That is the purpose you use the dunnage for, isn't it? A. That is the purpose.

Q. To keep the boxes away from the skin of the ship? A. Yes, that is the purpose of it.

Q. And if you use your pumps effectually, you don't get enough water in the bilge to damage the cargo, do you?

A. Well, it all depends. I would not say that. In the weather like we had, ship laboring hard, you know, it is pretty hard to get everything out of her; it slops from side to side and she is quick and you

(Testimony of P. H. Karbbe.)

can't pick it up, perhaps.

Q. This was in the most stormy period of the year that this voyage was made, wasn't it?

A. Yes, sir.

Q. You expected you would have rough weather, didn't you? A. Oh, yes.

Q. And you expected and knew that it was incumbent on you to dunnage the cargo, on the theory that the weather would be bad? A. Yes, sir.

Q. And you said the vessel always took some water? A. Yes.

Q. You knew that if the water was not kept down in the vessel and the cargo was not properly dunnaged, that its damage—salmon particularly—would be inevitable, didn't you? A. Yes, sir.

Q. Now, if this salmon on that vessel or around the skin of the vessel, if the cases were all wet and the labels were all blackened with coal-dust, it was because the [254] water in the hold of the vessel had been permitted to wash up and down the skin of the vessel and get to that salmon in the boxes—isn't that true?

Mr. BOGLE.—I object to that as not a proper question, not proper cross-examination. The witness has not testified as to what caused the damage.

A. I don't know. I never saw nothing; I could not say anything.

Q. (Mr. KERR.) What?

A. I don't know of anything being damaged.

Q. Now, just if you assume that those boxes were wet and damaged with black bilge water, damaged

(Testimony of P. H. Karbbe.)

with coal-dust, and the labels were all discolored and the boxes were all blackened, that they—

A. (Interrupting.) Where was it damaged, where was it damaged?

Q. Now, I am asking you, I say if you assume those boxes were all blackened with water and discolored with coal-dust and the contents of them—

A. Yes, sir.

Q. (Continuing.) —that is where they got it, wasn't it?

A. Yes, but where was it damaged, where, what part of the ship? I don't know nothing about this at all.

Q. You didn't go down into the ship to see at all at any time, either after you arrived at Yes Bay or after you arrived at Seattle?

A. No, sir; nothing was reported to me, so I don't see why I should.

Q. If it had been properly done, notwithstanding you had a rough voyage, the salmon that were in the hold of that [255] vessel could not have been damaged with that water from the bilge, could it?

A. Your Honor, I don't know where the salmon was damaged. Was it damaged in the bottom of the ship or where was it damaged?

Q. I say, if the cargo that you brought down from these canneries was damaged and the cases all blackened and their contents blackened with water discolored with coal-dust, it was because your cargo was not properly dunnaged?

(Testimony of P. H. Karbbe.)

A. The cargo was properly dunnaged, I can swear to that.

Q. You say that after you encountered these storms you directed the pumps to be worked?

A. No, I didn't direct the pumps, because the pumps was always working.

Q. They were always working? A. Yes, sir.

Q. Well, there was only one of them in commission, wasn't there?

A. Oh, there was lots of them in commission. There was just one, you know, that is just to take whatever water don't run through quick enough, you know. When the ship is rolling like that, the same as I am explaining—

Q. (Interrupting.) How many bilge pumps did you have on your ship? A. We had one.

Q. Had one bilge pump? How was it operated?

A. It is operated from the deck.

Q. And by steam or hand?

A. By steam and by hand, either way you wanted to do it. [256]

Q. Was it worked by either steam or hand?

A. It was worked by steam.

Q. Did you see anybody work that pump at any time on that voyage? A. Yes, sir.

Q. What? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. When you got into this storm around Sitka, did you work the pumps? A. Yes, sir.

Q. How long?

A. We worked it about every hour.

(Testimony of P. H. Karbbe.)

Q. For how long?

A. Well, as long as there was any water there to get out.

Q. By hand or by steam? A. By steam.

Q. Worked it by steam. So that when you got back to Sitka, was there any water in the hold?

A. No, sir.

Q. None at all?

A. Never was any water in the hold.

Q. Was there any water in the hold at the time you got back to Ketchikan? A. No, sir.

Q. Was there at the time you left Yes Bay or Chomley? A. No, sir.

Q. Was there any water in the hold when you arrived at Seymour Narrows? [257] A. No, sir.

Q. Was there any water in the hold when you arrived at Seattle? A. No, sir.

Q. You kept it out at all times? A. Yes, sir.

Q. Then how do you account for the fact that this salmon, these boxes, were all so stained?

A. I don't account—

Q. (Interrupting.) And the contents damaged?

A. I can't account for it only stress of weather, that is all I can account for it.

Q. You can't account for it if there was no water in the bilge, can you?

A. Oh, there is some water in the bilge all the time, your Honor—all the time.

Q. You want the Court to understand, do you, that no water got through the decks of the "Jeanie" on that downward voyage, into the hold where this cargo

(Testimony of P. H. Karbbe.)

was stowed? A. No, sir; I don't. No, I don't.

Q. Did it go in there, or did it not?

A. I don't know, sir. I can't tell you that.

Q. Did it go through these tarpaulins, or not?

A. I don't know.

Q. You don't know anything about that. Did you make any examination as you came, notwithstanding the stress of weather, to ascertain whether the ship was taking water from her decks?

A. I did not; no, sir; I could not.

Q. Did you examine her decks after you got down?
[258] A. I could not.

Q. Did you examine her decks after you got down?

A. I could not. The salmon was clogged up right on the decks.

Q. Did you calk her decks before you started away again with her? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you examine her decks?

A. Well, we examined when—we could not examine no decks. Everything was all right aboard of her, as far as I know.

Q. As I understand you, from Chilkoot to Gypsum you encountered about a thirty mile gale?

A. Just about.

Q. That is not extreme wind for up in that country at all? A. No, sir; no.

Q. Nor even here? A. No.

Q. And you went to Gypsum? A. Yes, sir.

Q. There you could not discharge and you went on down to Sitka? A. Yes, sir.

(Testimony of P. H. Karbbe.)

Q. On the way to Sitka you encountered another gale of twenty-five to thirty miles? That was not an extraordinary gale, was it? A. No, sir.

Q. For that time of the year?

A. No, sir. [259]

Q. You left Sitka for where? A. Sulzer.

Q. For Sulzer? A. Yes, sir.

Q. An there you encountered about a forty-mile gale?

A. Well, forty to sixty, I could not say; somewhere around there.

Q. You were going to Sulzer to deliver coal?

A. Yes, sir.

Q. And you were on the outside? A. Yes, sir.

Q. How far was it up to Sulzer on the outside?

A. Well, I think it was somewhere around two hundred—somewhere around two hundred miles.

Q. South of Sitka, or north?

A. South of Sitka.

Q. I meant south when I said north. That is on Prince of Wales, is it? A. Yes, sir.

Q. Outside? A. Yes, sir.

Q. When you encountered that gale, you went into Clarence Straits? A. Yes, sir—no.

Q. And which way did you—

A. Chatham—no; I went up to Cape Ommaney.

Q. Up Chatham Straits? A. Yes, sir.

Q. Never went back to Sulzer?

A. No, sir. Yes, I tried to get back the other way, inside, [260] then; I went inside onto Chatham Straits and out for Clarence Straits and

(Testimony of P. H. Karbbe.)

tried to get to Sulzer.

Q. Did you lay to in Chatham Straits?

A. Yes, sir, I stayed in Chatham Straits from eleven o'clock that night until almost daylight in the morning; then I shot across.

Q. Then you started off towards Sulzer?

A. Yes.

Q. Then you encountered the same storm, did you?

A. No, we had fine weather that day—that is, pretty good weather, and then we had snow that night; the next day we had a gale when I was trying to get out to Sulzer.

Q. Then you turned back and went to Sitka?

A. Went to Ketchikan.

Q. I mean to Ketchikan. I beg your pardon. And from Ketchikan you went first to Yes, Bay?

A. Yes, sir.

Q. And there you took on how many salmon?

A. I could not say; somewhere around thirteen or fifteen thousand.

Q. In what hold did you put this salmon?

A. Well, I don't know. I guess I put it in No. 2.

Q. You had had coal in No. 2. Was it all out of No. 2 when you put it in? A. Yes. Oh, yes.

Q. You had unloaded it at Ketchikan?

A. Yes, sir.

Q. You had completed the unloading?

A. Everything was through, yes.

Q. You were never in the hold after the coal was taken out? A. No, sir. [261]

(Testimony of P. H. Karbbe.)

Q. Now, you went from there to Chomley?

A. From Ketchikan?

Q. Yes. A. To Bonanza Cove.

Q. I mean Yes Bay?

A. Yes Bay to Bonanza Cove.

Q. And then went to Chomley? A. Yes.

Q. And at Chomley you took on how many cases of salmon?

A. I think it was 10,000. I am not sure. I could not say. I don't know.

Q. In what hold did you put this salmon?

A. Well, I put—or loaded No. 3 hold, you know. Whatever space I had in No. 2.

Q. Well, then you put the salmon you got at Yes Bay and Chomley in No. 2 and No. 3?

A. Yes, sir.

Q. Did you have any other cargo, coming south, except this salmon?

A. Yes, I had about eighty boxes of fish, herring, on deck.

Q. It was your principal cargo? A. Yes.

Q. After you left Chomley you went back to Ketchikan? A. Yes, sir.

Q. And then started south? A. Yes, sir.

Q. And you had bad weather all the way?

A. All the way.

Q. You filed a protest? A. Yes, sir. [262]

Q. Your protest, Captain, does not show any entries in your log-book from the 3d to the 6th of January. How does that happen?

A. The 3d to the 6th? Well, that is on the inside,

(Testimony of P. H. Karbbe.)

you know; that is—

Q. (Interrupting.) It was not very bad or you would have made some entries in your log?

A. I know, it might have been blowing, you know, she would not take any sea in the inside waters like that, you know.

Q. Is this transcript set out in your protest a complete transcript of your log?

A. Yes, sir. I took it out myself—out of the log-book.

Q. Did you have a long showing the movements of the vessel from Juneau up to Chilkoot and Chilkoot out to Gypsum?

A. Yes, sir, everything showed in the log-book.

Q. Now, nothing unusual occurred on your southward voyage until you got down to the Gulf of Georgia? A. No, sir.

Q. Were you able to come through the Narrows—Seymour Narrows, or did you wait for the tide?

A. I think I waited for the tide; I am not sure.

Q. Generally do, don't you? A. Yes.

Q. You can't come through unless it is slack water? A. Unless you strike it lucky.

Q. You pass through Seymour Narrows on high slack or low slack?

A. High or low slack, either one.

Q. You knew, when you were lying inside of Seymour Narrows [263] waiting for slack water, that this gale was blowing outside, didn't you?

A. No, I did not. If I had—I would have gone to anchor if I had known it.

(Testimony of P. H. Karbbe.)

Q. How far is Cape Mudge from Seymour Narrows?

A. Ten miles—somewheres around ten miles.

Q. You knew, long before you got to Cape Mudge, that there was a strong gale blowing in the Gulf?

A. No, it was just a moderate; I thought I could make it and then it would moderate, you know.

Q. When did you get into a gale, after you left Seymour Narrows, that began to make you think that you might encounter something that was unusual? A. Well—

Q. (Interrupting.) Where were you?

A. Towards dark. You know it gets dark there about five o'clock, in the winter.

Q. Yes.

A. I hung to it and then it was too late. It was this mist.

Q. Where was the wind from? A. Southeast.

Q. A southeast wind? A. Yes, sir.

Q. What was the gale when you reached Cape Mudge?

A. Oh, I should judge it was—no gale when I reached Cape Mudge—probably a twenty-five or thirty-mile blow.

Q. How much was it blowing when you were off Comox?

A. When we was off Comox, that was the next day, fine weather. [264]

Q. Fine weather? A. Yes.

Q. Just blew that night?

A. Just blew that night.

(Testimony of P. H. Karbbe.)

Q. Where were you from the north end of Texada Island when this storm was raging?

A. That was on the south end, you know, of Texada Island, when it cleared up in the morning, eleven o'clock.

Q. Well, then, any gale that you had during that night you had off the west side of Texada Island, because you didn't make but thirty miles from the Narrows in a number of hours?

A. Well, somewhere around thirty miles; I don't know, twenty or twenty-five.

Q. You could have escaped any gale that was blowing by going into Blubber Bay?

A. I could? I could not see my hand before me. I could have gone inside, inside of Cape Mudge, or gone into Duncan Bay, if I could have seen anything.

Q. When did this snowstorm break on you, before you left Seymour Narrows, or after?

A. No, long after. That broke in the evening. It was not snow, it was misty weather—misty and a little sleet and like that.

Q. Could you see any distance?

A. Yes, I could see the fore-castle-head of that ship, that is about all.

Q. You knew where you were?

A. No, part of the time I didn't know where I was.

Q. And you think that that night the wind blew fifty or [265] sixty miles an hour out there in the Gulf? A. Somewhere around there, yes.

(Testimony of P. H. Karbbe.)

Q. Head wind? A. Head wind, yes.

Q. Did you attempt to make headway against it, or were you simply lying to?

A. No, I was—I had to keep her full speed ahead to keep steerage way on the ship.

Q. And the next morning you say you were down about the south end of Texada?

A. Well, yes, just about the south end of Taxada Island I said—no, north end of Texada Island.

Q. The north end? A. The north end.

Q. How far is the north end of Texada from Cape Mudge?

A. Oh, about—Cape Mudge, about twenty-two, twenty-three miles, I guess, somewhere around there.

Q. You knew where Texada Island was?

A. Yes.

Q. Knew the direction? A. Yes.

Q. You did not make any effort to get any protection from that, did you?

A. No, I made effort to keep away from Texada Island and every other island in the Gulf.

Q. How long did that gale of wind last?

A. Well, at eleven o'clock she cleared up and we got fine weather—finest kind of weather.

Q. Was the storm or wind that you encountered in the Gulf of Georgia any more severe than that you encountered around [266] Sitka?

A. Oh, yes. Yes, a good deal; yes, only it was ahead, you know.

Q. Did you meet the "Humboldt" on that trip?

(Testimony of P. H. Karbbe.)

A. I didn't meet her. I saw her.

Q. Saw her on that trip? A. Yes.

Q. Did you see her when she came through Seymour Narrows? A. No.

Q. You did not?

A. No. She did not see me, either.

Q. Did she pass *her* on the way south?

A. Yes.

Q. Passed you where?

A. Well, I don't know where.

Q. She passed you between the south end of Texada Island and Active Pass, did she not?

A. No, she didn't.

Q. What? A. No.

Q. Where did she pass you?

A. I don't know, but I know she didn't pass us there.

Q. Where did she pass you?

A. I don't know, sir.

Q. And if her log don't show any such storm as that, you still say you had a sixty-mile gale, do you?

Mr. BOGLE.—We object to that. The log-book of the "Humboldt" is not in evidence here. We don't know what it shows.

A. The "Humboldt" went through about twenty-four hours—[267] about forty-eight hours before me—or thirty hours, anyway.

Q. (Mr. KERR.) As I understand you now, you say there was no snow in the Gulf of Georgia?

A. No, I don't think there was much. There

(Testimony of P. H. Karbbe.)

might have been a little sleet—that is all—a little snow.

Q. What time in the morning did you say you encountered clear weather?

A. Somewhere around eleven o'clock.

Q. Passed the Narrows?

A. Yes. I could not say what time. It was some time in the forenoon; that is the easiest way. It is a long time ago.

Q. At what hour did you arrive at Seattle, do you remember?

A. Some time in the afternoon, I think.

Q. Of that day? A. No, the next day.

Q. The next day? A. Yes.

Q. What day did you have the fine weather?

A. Well, the day before we arrived in Seattle.

Q. That would be on the 7th of January you encountered this nice weather, from eleven o'clock on?

A. Yes, somewhere around—from the forenoon on.

Q. Did you work the pumps at all on the 6th or 7th? A. Oh, yes, sir.

Q. Did you work them after you encountered the fine weather? A. No, sir; no need of it.

Q. You worked the bilge pump while the gale was on, did you? [268] A. Yes, sir.

Q. With steam?

A. Yes, sir, with the winch, you know, it goes with a messenger.

Q. Did you have any personal knowledge that the pump was worked? A. Yes, sir.

(Testimony of P. H. Karbbe.)

Q. Kept constantly at work, was it?

A. No, sir, just when—you know when a ship sucks you stop the pump or else you spoil the rubber or leather, whatever it is.

Q. What is your usual time from the south end of Texada Island into Seattle, by the "Jeanie"?

A. Oh, I don't know. I never figured that out.

Q. Now, after you got back to the Ketchikan from Chomley and Yes Bay, did you again have the hatches opened? A. No, sir.

Q. Where were they closed?

A. They were closed in Chomley.

Q. In Chomley; is that right?

A. Yes, that is right.

Q. Did you come through Seymour Narrows at low slack water or high, Captain?

A. I could not tell you, sir. It don't matter there whether it is low or high; there is lots of water.

Q. Was there any means of entering the hold of this vessel where this cargo was stowed, from the time you left Alaska until you got to Seattle?

A. No, sir, unless we took off the hatches.

Q. Unless you took them off? [269] A. No.

Q. And nobody entered the hold at all?

A. No, sir.

Q. All the seas you encountered, as I understand your testimony, were head seas practically?

A. Oh, no, no, we had all kinds of seas.

Q. Had all kinds of seas? A. Yes, sir.

Q. Did you have all kinds of seas in the Gulf of Georgia?

(Testimony of P. H. Karbbe.)

A. No, we had pretty much—only you know the ship will fall off and—

Q. (Interrupting.) A gale of wind here in December on the Sound—or January—anywhere on Puget Sound, is not an unusual thing, is it?

A. No, sir.

Q. A sixty-mile gale? A. No, it is not.

Q. It is not unusual anywhere along up this coast—a sixty-mile gale, in the winter time, is it?

A. No, sir.

Q. It is a thing you would naturally expect you might encounter on any voyage?

A. You may, yes.

Q. And even greater than that? A. Yes, sir.

Q. The wind blows off Flattery at times as high as eighty miles an hour? A. Yes, sir.

Q. And you have encountered gales in Alaska, sixty, seventy or eighty miles an hour? [270]

A. Yes, sir.

Q. You have encountered them with the “Jeanie,” haven’t you? A. Yes, sir.

Q. That particular voyage, from the middle of December until the 7th or 8th of January, was about the period of year when you would naturally expect the worst gales? A. Yes, sir.